



Y Cyngor Cyfiawnder Gweinyddol a  
Thribiunlysoedd Pwyllgor Cymru  
Administrative Justice & Tribunals Council  
Welsh Committee

Hyruyddo Tegwch a Chyfiawnder  
Promoting fairness and redress

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ANNUAL REPORT 2010/2011







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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

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# Foreword

Since the creation of the Welsh Committee in July 2008, the administrative justice system in Wales has changed markedly.

From the very first, we argued for a single focal point for administrative justice in the Welsh Government. It was the key recommendation in our *Review of Tribunals Operating in Wales*, and we were very pleased to note the creation of an Administrative Justice and Tribunals Unit in March 2010. This year, we have started to see the administration of a number of Welsh tribunals come under the leadership of this Unit, and it is to be hoped that this trend will continue, helping to ensure independent and impartial delivery of administrative justice.

This year has also seen a real coming together of judiciary and administrators from a range of tribunals across Wales, working on issues of common interest and concern, such as training. This improved communication and working can only lead to a more integrated, joined-up tribunal system, and we believe this will be to the greater advantage of individuals in Wales.

Looking at the wider landscape, in Wales we now have a common complaints procedure for public service providers. This procedure promotes a clear and consistent approach towards complaints-handling across Wales, and it is to be hoped that all public service providers will adopt this approach. In addition, the AJTC published its report on 'Right First Time', which we hope will be used by decision-makers across Wales to improve the quality of original decision-making.

In my foreword to last year's Annual Report, I noted that the futures of the AJTC and its Committees were in doubt. Since then, the AJTC has been listed as a body to be abolished as part of the changes enacted under the Public Bodies Bill, and we face a period of uncertainty as we await the outcome of a Ministry of Justice consultation.

Administrative justice is clearly continuing to develop in Wales, and as ever there remain a number of risks. The Administrative Justice and Tribunals Unit must pursue its demanding work programme with diligence and determination, and there are a number of hurdles still to be overcome. In terms of non-devolved areas of administrative justice, the consequences of the recent merger of HM Courts Service and the Tribunals Service are as yet unknown. However, it is clear that over the coming months and years the new Service will be stretched by a high workload and financial constraints. In view of the current economic situation, it is at this time more important than ever that citizens have access to a fair and efficient system for the adjudication of disputes with the state.

Considering this wider context, it seems that the loss of the AJTC and this Committee will come at a critical time for administrative justice in Wales. Our real strength comes from our ability to look at the system in Wales as a whole, rather than focusing solely on devolved or non-devolved areas or distinguishing between complaints and appeals. We strive to represent the voice of the user, and as administrative justice in Wales develops, the First Minister will continue to need independent advice about the experience of the individual in Wales.

A handwritten signature in black ink, appearing to read 'Adrian Webb', written in a cursive style.

**Professor Sir Adrian Webb**  
Chair, AJTC Welsh Committee

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# Introduction

1. The Welsh Committee of the AJTC was established under the Tribunals, Courts and Enforcement Act 2007 and came into existence in 2008. The Committee has its own identity and we take responsibility for monitoring administrative justice in both devolved and non-devolved jurisdictions in Wales. We also contribute to the work of the AJTC as a whole, ensuring that the Council is aware of the implications of administrative justice policy on Wales and assisting with its project work.
2. In February 2010 the AJTC published its Corporate Plan for 2010-2013, outlining priorities for work over the coming years. In relation to Wales, we highlighted three main work strands. First, we considered that we would need to focus on taking steps to pursue and support the implementation of the recommendations made in our recently published *Review of Tribunals Operating in Wales* (the *Review*). Second, we wanted to encourage coherent policy and practice in administrative justice across devolved and non-devolved areas. Third, we wished to promote the concept of 'Right First Time' across decision-making bodies in Wales.
3. At the same time, the AJTC produced its Action Plan for 2010-2011. In it, the Welsh Committee sought to elaborate how we would start to develop our three work strands. Pursuing implementation of the recommendations made in the *Review* was to be our priority, and we would work with administrators within tribunals themselves and the Welsh Government along with members of the judiciary in order to achieve a better system of adjudication for Welsh citizens. We also planned to continue with our programme of regular visits to devolved tribunals to assess whether the service delivered to tribunal users matched up to the standards set out in the *Review*. In relation to developing a coherent policy for administrative justice, we would increase our number of visits to non-devolved tribunals and would support the development of a common complaints handling system across the public sector in Wales. We would also seek to investigate access to advice, guidance and representation across Wales. Finally, we would contribute actively to the AJTC project on 'Right First Time'.
4. This report also seeks to cover some of the work undertaken by this Committee after April 2011. We added a new priority for action, which was to monitor closely the impact on users in Wales of the April 2011 merger of HM Courts Service with the Tribunals Service. In view of the anticipated abolition of the AJTC and therefore of the Welsh Committee, we also stated that we would work with Welsh Government officials and stakeholders in the administrative justice system to seek another home for some of our advisory and supervisory tasks.

# Priority 1: Implementation of the recommendations made in the *Review of Tribunals Operating in Wales*

5. The Review was published in January 2010, and made 21 recommendations for change. The recommendations were listed under four categories – independence and impartiality; accessibility; efficiency and effectiveness and coherence.
6. Cabinet approved the implementation action plan in November 2010. The Welsh Government has chosen to pursue the core recommendations as a priority. The remainder, which offer areas for further work and reform, will be treated as special projects and will form part of the future work programme for the Administrative Justice and Tribunals Unit.

## Independence and Impartiality

7. Our first recommendation was that the Welsh Government establish a focal point for administrative justice in the Department for the First Minister and Cabinet. We hoped that this focal point would act as a catalyst for reform of tribunals, but would also help to ensure that development of administrative justice in Wales operated in a coherent and cohesive fashion. Following on from this, our second recommendation was that the Welsh Government transfer policy and administrative responsibility for devolved tribunals to this focal point.

### Focal point

8. We were delighted when in March 2010 the Welsh Government agreed to create a post to manage the implementation of the recommendations, to develop the structure for the administration of tribunals and to take responsibility for the coordination of general policy and practice guidelines.
9. The Administrative Justice and Tribunals Unit has now been able to appoint a Tribunal Operations Manager to support the head of the Unit and to work to identify, develop and implement improvements to business processes, standard operating models and procedures across the Administrative Justice and Tribunals Unit. This is a welcome step, and we commend the decision to allocate funding to allow the creation of this important post.
10. Due to internal restructuring within the Welsh Government, the Administrative Justice and Tribunals Unit has subsequently been transferred to the Permanent Secretary's Division. We have been assured by the First Minister that democratic accountability for the Unit will remain in his hands, and that he will continue to take an active interest in administrative justice matters.

## Transfer of responsibility

11. Following a scoping exercise by the Administrative Justice and Tribunals Unit, an Action Plan for implementation was approved by the Welsh Cabinet in November 2010. The Action Plan outlined that in keeping with recommendation 2, staff working to support tribunals but based within policy divisions would transfer, with relevant budgets, to the Administrative Justice and Tribunals Unit.
12. In practical terms, this is not an easy process as management arrangements vary from tribunal to tribunal. Therefore, the arrangements for each devolved tribunal have been subject to an internal review, gathering information on finances and other resources. The recommendations made by the audit department following the review must be implemented before a transfer can be completed. In addition, steps have been taken to standardise the grading and nomenclature of staff due to transfer into the Unit.
13. We were pleased to meet with the audit team before they began their investigations, and we commend the processes by which the Administrative Justice and Tribunals Unit has sought to ensure consistency across tribunal administration.
14. On 1 April, the Special Educational Needs Tribunal for Wales, the Registered Inspectors of Schools Appeal Tribunal and the Registered Nursery Education Inspectors Appeal Tribunal all transferred to the Administrative Justice and Tribunals Unit. This constituted a real landmark in the development of administrative justice in Wales, and set the precedent for a demonstrably independent and impartial system of adjudication.
15. Over the course of 2011-2012, it is anticipated that the Adjudication Panel for Wales, the Forestry Committee for Wales, the Mental Health Review Tribunal for Wales and the Residential Property Tribunal will all transfer into the Administrative Justice and Tribunals Unit. Following a review over the summer, the administration of the Agricultural Land Tribunal will also transfer into the Unit over the next twelve months.
16. There are outstanding difficulties in relation to the transfer of the administration of the Valuation Tribunals for Wales, School Admission Panels and School Exclusion Panels. One difficulty is that the Welsh Government does not currently provide administrative support for the tribunals and panels. We understand that scoping papers have been commissioned to move the process along. In terms of the Valuation Tribunals for Wales, an in-depth review of costs and other considerations will be undertaken during autumn/winter 2011. A decision as to how to proceed will then be taken by the Permanent Secretary.
17. While we recognise the difficulties relating to these transfers, we strongly urge that all possible steps are taken to resolve these issues and to transfer the tribunals and panels into the Administrative Justice and Tribunals Unit with as little delay as possible. We consider their transfer to be essential not just for the sake of the reputation of independent justice in Wales, but in order to ensure that users benefit from the use of standardised rules and procedures

across the country and across tribunals. In our visits over the past year, we have had concerns relating to the independence and impartiality of admission and exclusion hearing panels. We have also noted repeatedly some anomalies in certain procedures of the Valuation Tribunals, requiring legislative change. Administration from a central unit would provide the opportunity to remedy these problems. In addition, transfer of these jurisdictions would also assist with meeting further recommendations concerning rationalisation of tribunals, which we hope will be possible in view of the new legislative powers granted to the National Assembly.

18. Independent Review of Determinations Panels for both adoption and fostering are currently outsourced to the British Association for Adoption and Fostering. Their status will be reviewed when the contract ends in 2013. The Fire-fighter Board of Medical Referees is also currently contracted out, and transfer is not expected in the near future. Independent Social Services Complaints Panels are currently under review. One option under consideration is to alter the process for making complaints about social services in accordance with the Public Services Ombudsman for Wales' recommendations for a common complaints system across the public sector in Wales. A consultation is expected, and the Welsh Committee looks forward to submitting a response.

## Accessibility

19. Without being an advocate, the Committee seeks to represent the voice of the user of the administrative justice system. Consequently, the Review included a series of recommendations aimed at ensuring tribunals in Wales are accessible. We have been pleased to note some progress on these fronts, although we remain concerned that following abolition of the AJTC these types of issue will drop off the radar of administrators and politicians.

## Information

20. We noted that further work needed to be conducted into determining which methods are the most effective at delivering information to users, and recommended that all information provided is clear, comprehensive and accessible.
21. We understand that the Administrative Justice and Tribunals Unit is currently working on developing a tribunals website. We welcome any attempts to ensure that tribunal information is easily accessible and hope that this work will be done with the user in mind. We suggest that the Unit might find it sensible to involve stakeholders such as advice bodies before launching the final website.

## Procedures

22. We suggested that tribunal procedures should be enabling and take account of the fact that there is often an inequality of arms between the government and tribunal user. We recommended that judicial leaders and administrators work together to ensure tribunal forms and procedures are clear and simple for users to understand.

23. It was with pleasure that we recently had the opportunity to review draft Regulations for the Special Educational Needs Tribunal for Wales (SENTW). The Regulations were intended to consolidate and overhaul the existing four sets of regulations relating to SEN and disability discrimination appeals. The Regulations were long and it might be helpful to produce a quick-reference guide, but were clearly drafted with users in mind. This is evidenced not only through the use of language but also through provisions allowing child appellants to be accompanied by 'case friends'. This user-focus is to be commended, and we hope that these Regulations will be the basis for any future harmonised procedures to be used across devolved tribunals.

## Efficiency and Effectiveness

24. Our research for the *Review* revealed that the resources and administrative support available to Welsh tribunals varied significantly. We also observed that there was little consistency in the approach taken to training and appraisal of tribunal members. These issues can have direct consequences on users, and in terms of public administration it is proper to ensure the most effective use of the taxpayer's resources. Therefore, in addition to achieving independence and impartiality for tribunals in Wales, the transfer of administrative staff into a central unit would help to achieve greater efficiency and effectiveness across tribunals in Wales.

25. Concerning administrative resources, as noted above, the transfer into the Administrative Justice and Tribunals Unit has already started, and will continue into 2011-2012. It is expected that the Administrative Justice and Tribunals Unit will have a strategic and operational hub in Cardiff along with a further operational hub in Llandrindod Wells. It is hoped that the internal audit process noted earlier in this report will mean that inconsistency will be reduced and that tribunals will now have a clear blueprint on how to increase capacity and improve operations. As other tribunals transfer into the Unit, it is to be hoped that consideration will be given to the best use of resources available. It is encouraging that the Tribunal Operations Manager has established a tribunal reform Working Group to consider best practice and provide a vehicle for exchange of information and action relating to tribunal reform in Wales.

26. Concerning training and appraisal, this issue has been taken up by the Welsh Tribunals Contact Group. The group is chaired by Judge Elisabeth Arfon Jones, and has a varied membership, including representatives from the administration and judiciary of both devolved and non-devolved tribunals operating in Wales.

27. In the *Review*, we advocated the creation of a group where judicial leaders and administrators from each devolved tribunal would be able to meet. While we do not feel that the Contact group entirely matches this description, we very much welcome it as a positive vehicle for change in Wales. A representative of the Committee attends meetings of the Contact group, and we have provided the Contact group with details of the questions we asked of tribunals during the *Review*. We look forward to seeing all Welsh

tribunals work closer together to ensure a more consistent and comprehensive approach to training, and hope that in due course this group will also take up other issues of common interest or concern such as hearing venues.

## Coherence

28. We did not want the Review only to look backwards and remedy the difficulties and inconsistencies caused by the piecemeal development of the administrative justice landscape; we hoped instead that it could signal the start of a new, coherent approach to administrative justice in Wales. As part of this, we observed that guidelines were needed to ensure that tribunals in Wales did not continue to develop in an ad hoc and unstructured way.

### Welsh Language Tribunal

29. The National Assembly passed the Welsh Language (Wales) Measure 2011, providing for the creation of a Welsh Language Tribunal. This will be the first tribunal created in Wales since the establishment of the Administrative Justice and Tribunals Unit, and we consider this to be an important moment, creating an opportunity to demonstrate to Welsh citizens and observers in other parts of the UK that the principles enshrined in our Review are being put into practice.
30. The Measure gave us cause for concern on two points, with both of these points relating to a more general worry that an impression could be conveyed that Wales does not take seriously the need to ensure the independence from government of judicial and adjudicatory posts. We were also concerned that it was not immediately apparent that the messages of the Review had been fully received and understood.
31. Our first concern was the mechanism by which judges would be appointed to the Tribunal. We were disappointed that the Measure failed to include an explicit reference to the use of an impartial and independent appointments process for the selection of tribunal members. In paragraph 71 of the Review, we suggested that an open and impartial process could be achieved using either a judicial appointments mechanism such as the Judicial Appointments Commission, or through a Welsh Government public appointments mechanism.
32. Following meetings with the First Minister and officials, we have been reassured that the Welsh Government respects absolutely the constitutional need to ensure that the judiciary remains independent. We look forward to future discussions to determine the most appropriate mechanism for securing independent, fair and impartial appointments.
33. Our second concern was that prior to the passing of the Measure there was some debate as to whether the Measure was compatible with the legislation governing both the Public Services Ombudsman for Wales and the Parliamentary and Health Service Ombudsman.

34. In order that these Ombudsmen can fulfil their statutory obligations, and to ensure public confidence in the integrity of their schemes, it is imperative that these offices are seen to be independent from government. In addition, any incompatibilities between pieces of legislation could complicate the way in which Wales manages its own affairs in future.
35. These matters underline the fact that there remains work to be done before it can be said that administrative justice in Wales operates in a consistent and coherent fashion. It is essential that we get the individual components of the system right, such as ensuring independent appointments to tribunals. We must also ensure that administrative justice is treated as a system, and that the links between tribunals, ombudsmen and complaints are understood and respected.
36. We understand that legislative changes may be necessary in order to alter the current and varied appointment mechanisms for tribunal judiciary and members in Wales. However, we urge the Welsh Government to prioritise this work, and to ensure that there is a clear precedent – that demonstrably protects the independent of the judiciary – for all tribunals to follow.
37. We will continue to encourage the Welsh government to seek a resolution to the difficulties caused by the Measure, and hope that a practical solution can be found.

## Priority 2: Encouraging coherent administrative justice policy and practice

38. As noted above, ensuring coherence in the development of administrative justice was one of the key aims of the Review. However, devolved tribunals do not operate in a vacuum. Administrative justice in Wales also encompasses non-devolved tribunals, ombudsmen, complaints-handling and original decision-making.

### Visits

39. As a Committee, we gather much of our information through our visits and engagement programme. It helps us to see administrative justice from the perspective of the user, serving to alert us to areas where there are examples of good practice or where there might be issues that need to be resolved. Following each visit, we send a report of the visit to the tribunal judge and President, and we follow up any systemic issues – relating to procedure or policy – that we feel are detrimental to the effective delivery of administrative justice.

### Letter to Local Authorities

40. In August 2010, we decided to write to all local authorities in Wales to share some of our general observations. All the issues noted had arisen out of visits to and requests for information from school admission appeal panels, although similar concerns had been noted at other tribunal hearings organised by local authorities.

41. Our first concern related to appeals made in the Welsh language. We noted that the Welsh Language Act 1993 places a duty on the public sector to treat English and Welsh on an equal basis when providing services to the public in Wales. As a result, all local authorities in Wales have a Welsh Language Scheme, which should set out standards for the handling of correspondence and meetings in the Welsh language. We were concerned that in practice, school admission appeals made in the Welsh language were not always being dealt with in an adequate fashion. It was worrying that we had seen, for example, instances where documents had not been translated for panel members. We considered that this type of occurrence poses a real risk to justice for the individuals concerned, and strongly recommended that all local authorities review their procedures.

42. We also noted that we have observed some confusion as to the legal position concerning venues for educational appeals. The Welsh Government's School Admissions Appeal Code (2009) states:

*Given the emphasis on independence in the appeals process, a neutral venue must be used for the appeal hearing. Funding delegated to admission authorities for appeals must cover expenses such as this, although Local Authorities may be able to provide a suitable venue, if schools prefer.*

43. We used the letter to explain that all education appeals should be held in accessible and comfortable venues that are independent of any of the parties to the hearing. We recognised that local authorities may wish to use their own buildings as venues, as this will often represent the best value for taxpayers. However, where such a decision is taken, we would expect that the building selected is not also used to house education staff. Similarly, we do not regard a County Hall to be an entirely neutral venue, and if a decision is taken to hold the meeting at a County Hall, steps must be taken to ensure that it is not located near to education staff offices.

44. The final issue we raised related to the use of clerks for appeals. Again, we looked at the relevant provisions in the Welsh Government's School Admissions Appeal Code:

*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 advisor or who have experience in the conduct of enquiries or disciplinary hearings.*

45. The Code indicates that Local Authorities and school governors should try to look outside their own staff for clerks for hearings. This obligation is less stringent than the corresponding one about neutral venues, although it is clear that the Local Authority should still take all reasonable steps to try not to use their own staff. Appointment of an individual who works for the local authority as a clerk could risk creating a perception of bias.

46. We were pleased to receive a response from the majority of local authorities, outlining the procedures that they have in place. The issue was also discussed at the All Wales Admission Officer Group meeting. However, as noted earlier in this report, we remain concerned about the operation of education admission and exclusion panels, and consider that steps must be taken to ensure that administration of these panels is transferred to the Administrative Justice and Tribunals Unit as soon as possible.

### Venues for Mental Health Review Tribunals

47. The Mental Health Act Code of Practice for Wales sets out that hospital administrators must provide suitable accommodation for tribunal hearings, and explains that:

*The hearing room should be private, quiet, clean and adequately furnished....The patients should have access to a separate room in which to hold any private discussions that are necessary, for example, with their representative. Tribunal members must also be able to discuss their decision in private.*

48. We have visited a number of Mental Health Review Tribunal hearings over the past year. While some have entirely met these standards, we have had some concern about the suitability of other venues utilised.

49. We wrote to the President of the Tribunal to ask whether hospital administrators are routinely made aware of their obligations under the Code of Practice, and whether they are provided with more detailed room specifications to help them ensure that the rooms they select are fit for purpose. We were then able to discuss this

matter with administrators at the Tribunal. It was explained that while the President cannot make Practice Directions to this effect, the Tribunal was planning to provide all local health boards with more information on the standards that a room must meet before it can be used to hold hearings.

### **First-tier Tribunal (Social Security and Child Support)**

50. We have attended a number of Social Security and Child Support hearings. At one hearing, it was brought to our attention that the pro-forma papers provided to claimants contained a mistake that some might find confusing. We made a note of this in our visit report, which was sent to the President of the Social Entitlement Chamber.
51. Upon receipt of a copy of the visit report, the President wrote to us to say that he had asked for this issue to be investigated and, if necessary, remedied. We have since learnt that the Department for Work and Pensions has amended the form, removing this source of confusion for claimants.

### **Traffic Penalty Tribunal**

52. We were notified that the Traffic Penalty Tribunal had started to offer to appellants the option to conduct their appeal hearing via telephone, and we were pleased to be able to 'listen in' on a number of hearings.
53. At the end of one hearing, we noticed that after the adjudicator had left the call, one party and their representative remained connected to the telephone line and proceeded to hold a private discussion. We did not consider this to be appropriate, and have advised the tribunal to ensure that all parties disconnect simultaneously.
54. Despite this, on each occasion we considered that the hearings were well run and efficient. We also considered that the use of a telephone hearing was appropriate to the type of case involved. We commend this type of approach to other tribunals as an efficient and effective way of dealing with certain types of proceedings.
55. We were also impressed with the Traffic Penalty Tribunal's user-friendly website. In particular, the section that allows users to view videos showing them what to expect from the tribunal hearing is particularly helpful.

### **Valuation Tribunals**

56. As mentioned above, recent visits to Valuation Tribunals have caused us to notice an anomaly in their procedures. We were made aware that a high number of cases before the tribunal were there as a result of the agents for the appellants failing to return the appropriate paperwork after having agreed a settlement with the Listing Officer. This failure required the tribunal to consider the case and dismiss it. While we understood that it was necessary to close down each case formally, we wondered whether it would be possible to find a more proportionate and cost effective way of dealing with these cases, rather than convening a full hearing of the tribunal.

57. The Chief Executive of the Valuation Tribunal Service for Wales explained to us that legislative change would be necessary in order to alter the process for closing these types of case. We hope that in the near future we will see the transfer of these tribunals into the Administrative Justice and Tribunals Unit. In the meantime, we would like to suggest that it ought to be possible for the Valuation Tribunal for Wales to adopt a process not dissimilar to the telephone hearings conducted by the Traffic Penalty Tribunal. Since it is necessary that these cases are closed by a tribunal, it might be a more efficient use of time and money to hold these hearings via telephone rather than in person.

## Meetings

58. In addition to visiting tribunals, we have tried to engage with wider administrative justice issues by meeting with a number of stakeholders across the system.

### Head of Vulnerable Children Policy Team

59. Ms Davies, Head of the Vulnerable Children Policy Team in Wales joined us at our meeting in July 2010 to discuss Independent Review Panels for fostering and adoption decisions. In our 2009-2010 report, we noted that members had observed some early hearings held by these panels and had a number of deep concerns.

60. Ms Davies noted that the administration of the panels had since been outsourced to the British Association for Adoption and Fostering (BAAF), and that this meant that there was now a separation of policy-makers and decision-makers. She added that all panel members are provided by BAAF's external recruitment process and that the contract specifically excludes government lawyers from being a panel member.

61. We welcomed these steps to ensure greater impartiality and independence of the panels. However, we remained concerned that there was still some confusion surrounding the nature and role of these panels, as more recent visits to panel hearings had created the impression that members of the panel considered the hearing to be more akin to a case conference than a judicial process. We felt this confusion was not assisted by the Guidance provided. We were grateful to Ms Davies for agreeing to look into this issue further.

### Law Commission

62. At our October 2010 meeting, we were joined by the Public Law Commissioner, Frances Patterson QC, and members of her team who had been working on their recently launched consultation on Public Service Ombudsmen.

63. The consultation flowed from the Law Commission's earlier work on Administrative Redress, and, in respect of Wales, made proposals in relation to both the Parliamentary Commissioner for Administration and the Public Services Ombudsman for Wales.

64. We discussed a number of the proposals, and agreed to feed our comments into the consultation response to be prepared by the main AJTC. In that response, we advocated a wider-ranging review of public services ombudsmen and their relationship with the administrative justice system as a whole. In its final report, the Law Commission also recommended a wide-ranging review.

### **Social Fund Commissioner**

65. The Chair met with Karamjit Singh, the Social Fund Commissioner, to discuss the Welfare Reform Bill. The Bill proposed changes to the social fund scheme, including making provision for the abolition of the office of the Social Fund Commissioner and the Independent Review Service he leads.

66. The Committee was disappointed to note these changes, and wished to express its concern that the good practice and innovative approach to resolving disputes that had been developed by the IRS would be lost.

67. The Chair of the AJTC, Richard Thomas, is pursuing this issue on behalf of the AJTC as a whole, and has written to the Secretary of State for Work and Pensions to urge that steps are taken to retain the expertise contained within the IRS model and IRS staff.

68. It is anticipated that the Welsh Government will consult on how to replace the social fund scheme in Wales. The Committee looks forward to considering the Welsh Government's plans, and hopes that any decision-making mechanism will allow for a review of the decision, with continuing access to redress where necessary. We commend the AJTC's Principles for Administrative Justice and 'Right First Time' report as a useful starting point for policy-makers in this area.

### **Advice and Guidance Organisations**

69. In the Review we recommended that the Welsh Government conduct a review of the general and specialist advice available in Wales, looking at the quality of advice and identifying any gaps in its provision. We hoped that we would be able to assist with this project by starting an investigation into the availability and quality of advice, guidance and representation across Wales. It was anticipated that rather than conduct empirical research ourselves, we would be in a position to commission a partner to work with us on this mapping project. Unfortunately, due to financial constraints imposed on the organisation, it was not possible to begin this project.

70. We continue to see this as a significant matter, in particular as we are concerned that over the coming months and years the citizens of Wales will be significantly disadvantaged by cuts made to public services, including those to legal aid. Not only is advice and guidance of use to the individual concerned, but failure to ensure that individuals have access to legal advice can impose a burden on the state too, as tribunals may struggle to cope with unprepared and confused appellants.

71. We met with representatives from the Legal Services Commission, Consumer Focus and Citizens Advice Cymru to discuss these concerns. All three organisations agreed with our assessment, but they were not in a position to take the project forward.

72. We recognise that the Welsh Government has taken steps to improve access to advice, with a 2009 grant to Citizens Advice Cymru to create a single advice line. Separately, we commend the work of the Public Services Ombudsman for Wales, who as part of his common complaints signposting system will seek to provide an interactive list of the advice available.
73. However, there is still a paucity of information about the advice available to individuals in Wales. We hope that the Welsh Government will remain alert to the risk that this lack of information poses and we therefore repeat our recommendation that the Welsh Government undertakes a comprehensive review of advice and guidance provision in Wales as a priority.

## Consultations

74. In addition to those mentioned elsewhere in this document, over the past year we have responded to a number of formal consultation requests under Part 3 Schedule 7 of the Tribunals, Courts and Enforcement Act 2007.
75. We were asked about Regulations to amend the Contaminated Land (Wales) Regulations 2006. The amending Regulations would change all references to the Lands Tribunal to references to the Upper Tribunal. This was to reflect the fact that the Lands Tribunal was abolished in June 2009 and its functions transferred to the Lands Chamber of the Upper Tribunal. We were satisfied with the proposed amendments.
76. We were also asked to comment on the Marine Licensing (Civil Sanctions) (Wales) Order 2011 and the Marine Licensing (Notices Appeals) (Wales) Regulations 2011. In response to this request, we raised one query. Under both the Civil Sanctions Order (28(2)(b)) and the Notices Appeals Regulations (5(1)(b)), in cases that do not involve the commission of an offence, the First-tier Tribunal is left to set the burden of proof. It appeared to us to be constitutionally puzzling that determination of the burden of proof is not dictated and rather is left to the judiciary to decide. We asked whether there was any precedent or particular reason for this type of provision. We were told that the provisions were based on the Environment Civil Sanctions Order 2010 and simply reflected the language used in that Order. We did not consider that this was an adequate reason for leaving such an important matter undecided, and suggested that the provisions be amended.
77. We also commented on the Assembly Education Measure. We considered that the Measure provided an opportunity to make it compulsory for school governors to receive training on school admission and exclusion processes and appeals. We also noted that in England the Local Government Ombudsman in England has jurisdiction to investigate certain complaints about school related matters, such as admissions and allocations, school exclusions and transport. In Wales, there is no corresponding right of complaint to the Public Services Ombudsman for Wales. In view of the long-term impact that decisions concerning education can have on the child concerned, it is important that parents and children have recourse to an independent complaint handler where necessary. The Measure provided an opportunity to remedy this anomaly.

## Priority 3: Right First Time

78. In our Review, we identified improving original decision making as a priority for administrative justice. The main AJTC agreed, and one of its projects for 2010-2011 was to look at how to ensure decisions relating to individuals are 'Right First Time'. The report of the project was published in June 2011.
79. In the first instance, the Chair represented our Committee on the project group. As part of the project, he conducted a visit to the Principality Building Society, the largest wholly Welsh financial institution, to learn about their approach to handling complaints. While the visit did not constitute a formal case study in the report, the information gleaned from the visit helped to inform the group's understanding of the importance of complaints to organisations.
80. Following its publication, we have been keen to work out how the report and its recommendations can be adapted to fit the situation in Wales. At our meeting in June 2011 we held a preliminary discussion with representatives from the Welsh Government, and agreed to hold a further discussion in October 2011, where we will be joined by representatives of the Welsh Local Government Association.

## Appendix A: Membership of the Welsh Committee

### **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.

### **Gareth Lewis**

Member of the Employment Appeal Tribunal and an independent chairman for the National Assembly of retrospective reviews of decisions about funding continuing healthcare. 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.

### **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.

### **Rhian Williams-Flew**

Registered social worker and qualified as a registered mental nurse. 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 Tribunal (Mental Health) 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: Costs of the Welsh Committee

### Welsh Committee

	2009-10	2010-11
Staff Costs <sup>1</sup>	50,479	32,664
Members' Retainers <sup>2</sup>	19,385	19,491
Members' Travel etc <sup>3</sup>	4,840	3,311
Meeting costs <sup>4</sup>	2,581*	1,240*
Conference costs <sup>5</sup>	4,101*	-
Administrative costs including office supplies, postage <sup>6</sup>	-	-
<b>Totals</b>	<b>81,386*</b>	<b>56,706*</b>

<sup>1</sup> Member of staff based in London acting as Secretary to the Welsh Committee and other administrative support.

<sup>2</sup> Members of the Welsh Committee receive 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.

<sup>3</sup> Members' expenses for attending Committee meeting, visits to tribunals and other events.

<sup>4</sup> Cost of hiring rooms etc for meetings of the committee.

<sup>5</sup> Cost of the Welsh Committee Conference 'Administrative Justice in Wales: Citizens at the Centre'.

<sup>6</sup> Administrative costs are met by the AJTC and cannot be separately identified.

\* The expenditure under footnotes 4 and 5 is not specified separately within the costs table in the AJTC's Annual Report for 2010/11, but is included within the overall total for the AJTC's "other admin costs".

## Appendix C: Meetings and tribunal Visits

### Welsh Committee Meetings

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23 March 2010

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29 June 2010

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13 October 2010

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7 December 2010

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22 March 2011

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22 June 2011

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### Welsh Committee Tribunal Visits

May 2010	NHS Independent Complaints Panel	Carmarthan
May 2010	Agricultural Lands Tribunal	Gloucestershire
May 2010	Residential Property Tribunal	Colwyn Bay
May 2010	Education Admission Appeal Panel	Cardiff
June 2010	First-tier Tribunal Immigration and Asylum	Newport
June 2010	War Pensions and Armed Forces	Cardiff
July 2010	Mental Health Review Tribunal	Llandough
July 2010	Upper Tribunal Lands Chamber	Cardiff
September 2010	Employment Tribunal (Welsh speaking)	Kinmel Bay
September 2010	Adjudication Panel Wales (Welsh speaking)	Cardigan
October 2010	First-tier Tribunal Tax	Cardiff
October 2010	First-tier Social Security and Child Support	Swansea
November 2010	Valuation Tribunal	Pontypridd
November 2010	Independent Review of Determinations	Llandarcy
February 2011	First-tier Social Security and Child Support	Cardiff
February 2011	Mental Health Review Tribunal for Wales	Bridgend
February 2011	Mental Health Review Tribunal for Wales	Caerlon

February 2011	Traffic Penalty Tribunal	Cardiff
February 2011	First-tier SCS	Swansea
March 2011	Employment Tribunal	Kinmel Bay
March 2011	Employment Tribunal	Llanelli
March 2011	SENTW	Newport
March 2011	Valuation Tribunal	Powys
March 2011	First-tier Tribunal Immigration and Asylum	Newport
April 2011	Traffic Penalty Tribunal	Telephone
April 2011	Traffic Penalty Tribunal	Telephone
April 2011	Education Admission Appeal Panel	Cardiff
May 2011	Independent Review of Determinations	Llandrindod Wells
September 2011	First-tier Social Security and Child Support	Port Talbot

#### Stakeholder meetings and events

May 2010	Welsh Language Standing Committee
May 2010	New Legal Services Board
May 2010	Senior President's Conference
June 2010	Mr Justice Roderick Evans
March 2011	Justice Wales Network Seminar
March 2011	SENTW User Group
March 2011	Citizens Advice
April 2011	Welsh Tribunals Contact Group
April 2011	Lord Justice Pill
April 2011	Social Fund Commissioner
May 2011	Legal Services Commission
May 2011	Public Law Conference
June 2011	Welsh Tribunals Contact Group