



Y Cyngor Cyfiawnder Gweinyddol a
Thribiwnlysoedd **Pwyllgor Cymru**
Administrative Justice & Tribunals Council
Welsh Committee
Hyryddo Teguch a Chyfiawnder
Promoting Fairness and Justice

Administrative Justice & Tribunals Council Welsh Committee

ANNUAL REPORT 2009/2010

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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Chair's Foreword

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

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

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

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



Professor Sir Adrian Webb

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Introduction and Summary

1. This is the second Annual Report of the Welsh Committee of the Administrative Justice and Tribunals Council (AJTC). The AJTC was established under the Tribunals, Courts and Enforcement Act 2007 ('the Act'). The Welsh Committee came into existence on 1 June 2008. Its first Annual Report covered the period up to March 2009. This report covers the period from 1 April 2009 until 31 March 2010.
2. The Welsh Committee has its own separate identity and takes the lead in overseeing administrative justice in Wales in both devolved and non-devolved jurisdictions. Members also play an important part in the AJTC's work as a whole. For example, our Chair sits as a member of both the Welsh Committee and the AJTC, and members are actively involved in the AJTC's UK-wide project work. The key functions of the AJTC and the Welsh Committee are set out in the Act.
3. The work of the Committee in 2009-10 has been informed by its three strategic objectives:
 - a. To keep under review and influence the development of administrative justice and tribunals in Wales
 - b. To keep under review devolved and non-devolved tribunals, and the work of the Tribunals Service as it affects Wales
 - c. To respond authoritatively to emerging issues and proposals that affect or involve administrative justice, tribunals and inquiries in Wales.

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

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

5. Since our last Report, we have:

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

Objective 1: Keeping under review and influencing the development of administrative justice

OUR ROLE

We have been appointed by the Welsh Ministers¹ to undertake the following statutory functions:

- keeping the administrative justice system in Wales under review
- considering ways to make the system accessible, fair and efficient
- advising the Welsh Ministers and others on the development of the system in Wales
- referring proposals for changes in the system to the Welsh Ministers and others
- making proposals for research into the system in Wales.²

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

OUR PRIORITIES

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

- Establish an understanding of the administrative justice landscape in Wales
 - Run an administrative justice conference in Wales
 - Deliver our *Review of Tribunals Operating in Wales* to Welsh Ministers
 - Continue to participate in strategic meetings affecting administrative justice in Wales.
6. As we noted in our 2008-09 Annual Report, administrative justice in Wales is characterised by its complexity. While 'justice' is not a devolved area, many of the substantive areas of government that have been devolved have brought their administrative justice machinery with them. This has meant that tribunals relating to health and education, for example, have been devolved to the Welsh Assembly Government whereas tribunals relating to most welfare benefits are still operated on an 'England and Wales' or 'UK-wide' basis by the Tribunals Service.
7. The impact of the Tribunals, Courts and Enforcement Act 2007 on non-devolved tribunals has been significant. Tribunals that were once managed by individual government departments in widely varying ways have been drawn together in unified judicial and administrative structures independent of the government departments about whose decisions they hear appeals.

² *Tribunals, Courts and Enforcement Act 2007*, Schedule 7, para 7.

³ *Tribunals, Courts and Enforcement Act 2007*, Schedule 7, para 13.

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

AJTC WELSH COMMITTEE CONFERENCE

9. The Conference “Administrative Justice in Wales: Citizens at the Centre” was held in Cardiff on 18 June 2009. It was a timely opportunity to bring stakeholders together to discuss the strategic context of, and specific issues facing, devolved administrative justice in Wales. Andrew Davies, the then Minister for Finance and Public Service Delivery, gave the keynote speech. He explained the importance of ‘citizen focus’ and explained that it meant, among other things, a need to adapt public services to suit citizens and not vice versa. He stressed that this approach was not just democratically important but that it could also lead to more efficient and responsive services by empowering frontline staff and learning from the best innovations elsewhere. Dame Gillian Morgan, Permanent Secretary for the Welsh Assembly Government, used an example of patient experience in the NHS to demonstrate the importance of understanding and responding to individual needs, getting away from any notion of ‘batch processing’ people.
10. Peter Tyndall, Public Services Ombudsman for Wales and an *ex officio* member of the Welsh Committee, emphasised the complexity of administrative justice from the citizen’s perspective. He indicated that there was strong government support for the development of a streamlined complaints procedure encompassing all public services in Wales, coupled with far better signposting for citizens seeking help and advice.
11. Mr Justice Lloyd Jones, Presiding Judge for Wales, explained that from April 2009 the Administrative Court had been able to sit in Cardiff. This regionalisation process was intended to make it easier for citizens seeking judicial review of government decisions to gain access to justice. Mr Justice Nicholas Warren provided an update on the unified tribunal structure, focusing particularly on the Upper Tribunal. He noted that Welsh devolved tribunals were largely outside this arrangement, but that the principles of independence and judicial expertise were applicable across borders.
12. Sir Adrian Webb, our Chair, introduced the planned *Review of Tribunals Operating in Wales*, setting out issues with devolved tribunals that most concerned the AJTC.
13. The Conference also provided for sessions allowing attendees to work together on analysing the problems and issues facing administrative justice in Wales and to start to frame potential solutions to these problems. The intelligence gathered in these sessions proved invaluable in the development of the key recommendations in our *Review of Tribunals Operating in Wales*.

REPORT OF THE REVIEW OF TRIBUNALS OPERATING IN WALES ('REVIEW')

14. In November 2008, we initiated a review of devolved tribunals in Wales in response to:
 - Our observations of the complexity and fragmentation of tribunals in Wales, with significant differences in the way the various devolved tribunals operate and are administered
 - Instances of reform relating to devolved tribunals being considered in an ad hoc and disjointed way
 - An apparent lack of independence of Welsh tribunals, with responsibility for tribunals and their administration lying with those whose decisions it is the tribunals' duty to consider
 - Discussions with users.
15. The Terms of Reference were to review tribunals in Wales to determine whether:
 - administrative and practical arrangements are independent and impartial
 - they are accessible to users
 - they are properly resourced and organised
 - tribunals overall constitute a coherent structure.
16. In the first half of 2009-10 the Committee was primarily concerned with developing and distributing detailed questionnaires to gather data and intelligence from Welsh tribunals. The information provided enabled us to draw up a complete picture of the disparate arrangements in place in the different Welsh tribunals.
17. Our *Review* was laid before the National Assembly for Wales on 29 January 2010³. This was the culmination of over twelve months of preparation, research and report production. The Committee particularly wishes to express its gratitude to Carly Sheen, Secretary to the Committee from its inception in June 2008 until October 2009, for all of her hard work in bringing the *Review* to fruition.
18. In his foreword to the *Review*, Sir Adrian Webb makes clear that the *Review* "raises matters of serious concern – but also opportunities for improvement in the cost-effectiveness of tribunals and of the administration of public services to which they relate". He acknowledges that the issues raised "are not of Wales' making, but the solutions lie wholly within our hands".
19. The *Review* makes 21 recommendations for change. Most importantly, it advocates the creation of a focal point for administrative justice policy in the Department of the First Minister and Cabinet, which would also provide an independent locus for tribunal administration in Wales. It further recommends that all appointments to tribunals should be open, fair and based on merit and that there should be far greater co-ordination and co-operation between judicial leaders and administrators of Welsh tribunals.

³ The document can be downloaded in English or Welsh at www.ajtc.gov.uk/welsh/publications.htm

20. The *Review* makes a series of detailed recommendations for reform in the following areas:
- **Accessibility** – including engagement with users, access to advice and representation and better complaints policies and procedures
 - **Efficiency and Effectiveness** – including resourcing, administrative support, training and appraisal for tribunal members
 - **Coherence** – including a better approach to establishing new tribunals, a more coherent approach to appeals and work to improve the quality of original decision making by government departments.
21. The Welsh Assembly Government Cabinet considered the Report of the *Review* in March 2010, and committed to two actions:
- To hold a plenary debate at the beginning of the autumn term
 - To scope the internal actions needed for substantive consideration of the recommendations, resulting in a draft action plan for Ministerial approval.
22. The Committee was pleased to receive a response from John Griffiths, Counsel General, on behalf of the First Minister on 8 April 2010. This welcomed the *Review* and indicated that the Assembly Government 'want to respond positively to its findings and recommendations'. The letter went on to announce that:
- The Head of Administrative Justice Branch had been appointed and is located within the Department of the First Minister and Cabinet
 - The Welsh Assembly Government intended to manage the transition of the Welsh Tribunals with associated staff and budgets to the Department of the First Minister by April 2011
 - The Welsh Assembly Government would present an Action Plan for implementation of the Review to the National Assembly for Wales in autumn 2010.
23. The Committee welcomes the rapid and positive response to the Review by the Welsh Assembly Government. We look forward with great anticipation to the reforms planned over the coming year, and stand ready to provide whatever help and support it can in the process of transition.

COMMON COMPLAINTS HANDLING

24. Although the focus of much of the Committee's work has been the devolved tribunals, over the past two years we have become increasingly aware that complaints about public services, as opposed to formal redress machinery such as tribunals, constitute an important area of administrative justice. We were encouraged when Peter Tyndall, Public Services Ombudsman for Wales and member of the Welsh Committee, was appointed to chair a working group to look at this topic. Peter discussed his ideas at our Conference in June.

Since then the working group has developed a model complaints framework based on a set of principles that can be adopted by a range of public services to achieve a more streamlined approach to complaints handling.

REPRESENTATION ON STRATEGIC GROUPS

Lord Chancellor's Standing Committee for the Welsh Language

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

Welsh Tribunals Contact Group

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

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

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

Objective 2: Keeping under review the work of the tribunals and inquiries operating in Wales

OUR ROLE

We have been appointed by the Welsh Ministers⁴ to undertake the following statutory functions:

- keeping under review, and reporting on, the constitution and working of listed tribunals⁵ operating in Wales in general, and of each such tribunal
- considering and reporting on any matter relating to listed tribunals operating in Wales that we determine to be of special importance
- considering and reporting on any particular matter relating to tribunals that is referred to us by the Welsh Ministers or the Lord Chancellor⁶.

We have similar functions in relation to statutory inquiries⁷.

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

OUR PRIORITIES

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

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

⁴ *Tribunals, Courts and Enforcement Act 2007*, Schedule 7, para 7.

⁵ 'Listed tribunals' are the First-tier Tribunal and Upper Tribunal established by the *Tribunals, Courts and Enforcement Act 2007* and tribunals listed by orders made by the Lord Chancellor, the Scottish Ministers and the Welsh Ministers. The AJTC must be consulted before procedural rules are made for any listed tribunal except the First-tier Tribunal and Upper Tribunal. The AJTC is represented on the Tribunal Procedure Committee that makes procedural rules for the First-tier Tribunal and Upper Tribunal.

⁶ *Tribunals, Courts and Enforcement Act 2007*, Schedule 7, para 14.

⁷ *Tribunals, Courts and Enforcement Act 2007*, Schedule 7, para 15. 'Statutory inquiry' means an inquiry or hearing held by or on behalf of the Welsh Ministers in pursuance of a statutory duty, or a discretionary inquiry or hearing held on behalf of the Welsh Ministers which has been designated by an order under the *Tribunals and Inquiries Act 1992*.

OUR ACTIVITIES

Observation of Hearings

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

Social Security Appeals

29. On completion of the *Review of Tribunals Operating in Wales*, we turned our attention to non-devolved tribunals in Wales, and in particular to social security appeals. We were grateful that first Mrs Jackie Hankins, Welfare Rights Manager from Neath Port Talbot Welfare Rights Unit and then Judge Jim Wood, Regional Judge, First-tier Tribunal (Social Security and Child Support) were able to meet with the Committee in December 2009 to discuss social security appeals.
30. Mrs Hankins had consulted widely in the Welfare Rights community, and presented a comprehensive perspective on tribunal appeals against benefits decisions. She noted a number of concerns about processes before, during and after tribunal hearings although she was generally complimentary about the way that tribunals themselves are conducted. Her particular concerns were:
- There can be considerable delays in getting cases listed
 - Notice and provision of papers to welfare rights representatives is variable
 - Too many adjournments occur because the Tribunal doctor knows the patient – this should be checked in advance
 - There is a common perception that the Department for Work and Pensions (DWP) ‘reconsideration’ process just ‘goes through the motions’ with few decisions changed due to new evidence. This same evidence often forms the basis of a successful appeal at tribunal
 - DWP continues to use the medical evidence obtained to assess one benefit to make judgments about another, despite the fact that the legal tests are very different
 - There is concern that the Examining Medical Practitioner report is treated as ‘independent evidence’ when in fact it has been commissioned by DWP on DWP forms
 - Leave to appeal is rarely granted by the tribunal Judge but almost always granted on further request to the Upper Tier.

31. Judge Wood provided the Committee with a clear statement of how the current tribunal arrangements had come about following the creation of the Tribunals Service and the First-tier and Upper Tier Tribunal Judiciary. He explained that hearings took place at venues across Wales, noting that due to significant increase in the number of hearings there was now some trade-off between accessibility and quality of venue. He noted that the number of sessions required had nearly doubled between 2007-08 and 2009-10⁸.
32. We were concerned to hear that the number of doctors available to support tribunals was far too low, and that attempts at further recruitment had been only marginally successful (69 appointments to fill 219 vacancies). The lack of medical members has led to regular cancellation of tribunal sessions, ultimately to the disadvantage of appellants for whom justice is delayed.
33. We were also concerned to hear that DWP representation at hearings continues to be in decline. Judge Wood noted that it used to be the case that the DWP would always be represented at tribunal hearings, but that attendance had slipped from roughly 40% in 2000-2001, 22% in 2007-2008 to about 16% in the current year. He was convinced that this non-attendance had led to a failure by the DWP to learn lessons from their mistakes. He pointed to the Annual Report of Judge Robert Martin, President of the Social Entitlement Chamber, which noted that tribunals were now routinely hearing for the first time evidence that should have been collected by DWP decision makers.
34. In response to this evidence, the Committee undertook three visits to Social Security tribunals in early 2010. Based on our observations, we were able to confirm the accuracy and insight offered by our two guests:
 - Concerns arose on more than one occasion about the quality of medical reports and the use of them for unrelated benefit claims
 - The decreasing availability of medical members was raised as a pressing issue by all of the panels we saw
 - DWP presenting officers did not appear at any of the tribunals we visited.
35. Disability Living Allowance applicants must be able to give an account of their health as it was at the time of application. We were concerned that substantial delays meant that this requirement placed too onerous a burden on claimants. In one case, the original date of application was 18 months before the hearing.
36. The AJTC submitted evidence on these issues to the House of Commons Work and Pensions Committee Inquiry into decision making and appeals in the benefits system. Many of these issues were then highlighted in the Committee's final report.
37. We will continue to monitor Social Security tribunals in 2010-11, but our observations suggest that this is a system where tribunal members are trying to do their best to provide a fair and timely hearing to clients in the face of ever-increasing workload, delays and resource shortages.

⁸ The number of Social Security and related benefit appeal sessions held in Wales in 2007/8 was 2941, 2008/9 3021, in 2009/10 it was 4691, and in 2010/11 it is estimated to be 5275. Year on year increases are expected until 2013.

Adjudication Panel for Wales

38. Part III of the Local Government Act 2000 established a new framework to ensure the observance of consistent standards by local government members in England and Wales. The Act created local standards committees, allowed for the investigation of alleged misconduct by the Public Services Ombudsman for Wales or local authority monitoring officers and also for the adjudication of any such investigations by local standards committees or a tribunal drawn from the Adjudication Panel for Wales.
39. On an earlier visit in 2008-2009, we had noted the difficulty faced by tribunals when there was no Presenting Officer from the local authority, as this meant that tribunal members were sometimes required to go beyond what might be regarded as their normal inquisitorial role when seeking to probe or challenge evidence and submissions before them. This caused some concern, as it risked bringing the impartiality of the tribunal into question. During our first visit this financial year we learned about draft revised Regulations. It was intended that these Regulations would widen the role of the Public Services Ombudsman for Wales at tribunal hearings by allowing him or his representative to attend a hearing either at their own volition or at the request of the panel, and by allowing them to participate to such an extent as the standards committee or tribunal considered appropriate. Previously, the Public Services Ombudsman for Wales had only attended hearings for the purpose of presenting his report on the matter under consideration.
40. We replied to the public consultation on the matter, welcoming the provisions in the draft Regulations. We felt that in view of the increasing tendency for legal representation at hearings it was important that the Public Services Ombudsman for Wales and his officers were able to play a more active role. We agreed that the new Regulations would assist the tribunal or standards committee in conducting a balanced and thorough consideration of the report and evidence.
41. We attended a tribunal hearing following the introduction of the Regulations, although before any final guidance had been issued by the President of the Adjudication Panel. Despite some confusion as to the exact implications of the new Regulations, we considered that the changes were an improvement on the previous regime. The Public Services Ombudsman for Wales' representative was able to set out the case for both sides, and his technical knowledge and ability was a clear help to the tribunal. This not only meant that the hearing was completed in a reasonable and fair time scale but also reduced any perception that the tribunal was not impartial.
42. The Committee was also invited to attend the training session for Panel members, at which interpretation of the new Guidelines was discussed.

Education Appeal Hearings

43. We have taken the opportunity to attend a School Exclusion Appeal hearing session and School Admission Appeal hearing session this year. We were glad to note that both hearings were fair and open, with well prepared panels.
44. In both instances we had some concerns about the perception of the independence of the appeals process. At one hearing, panellists were also governors of schools administered by the local authority which was party to the appeal. While this is not proscribed by the relevant codes, such a situation does risk creating a perception of bias.
45. Similarly, we were concerned by the use as clerks of employees of the local authority concerned. Paragraph 3.13 of the Education Admissions Appeal Code states:

*“Local Authorities and governors **should** normally look outside their own staff for people who have relevant experience working as a professional committee clerk or legal adviser or who have experience in the conduct of enquiries or disciplinary hearings.”*
46. We will continue to visit both types of hearing in the coming year and to work alongside local authorities to ensure that they meet their obligations to ensure the neutrality of the appeals process.

Tribunal User Groups

47. Committee members were pleased to be invited to attend User Group meetings on Special Educational Needs and Employment in 2009-10.

Objective 3: Responding authoritatively to emerging issues and proposals

OUR ROLE

We were appointed by the Welsh Ministers⁹ to do the following in the exercise of our statutory functions:

- respond to consultations on procedural rules for tribunals with jurisdiction in Wales¹⁰
- respond to consultations on procedural rules for statutory inquiries held in Wales¹¹
- scrutinise and comment on legislation, existing or proposed, relating to tribunals operating in Wales¹².

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

OUR PRIORITIES

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

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

⁹ *Tribunals, Courts and Enforcement Act 2007*, Schedule 7, s7.

¹⁰ *Tribunals, Courts and Enforcement Act 2007*, Schedule 7, para 24

¹¹ *Tribunals and Inquiries Act 1992*, s9, as amended by the *Tribunals, Courts and Enforcement Act 2007*, Schedule 8, para 28

¹² *Tribunals, Courts and Enforcement Act 2007*, Schedule 7, para 14(2)

CONSULTATION RESPONSES

Joint Complaints Handling in Health and Social Care Draft Guidance

48. The Committee was approached by officials from the Welsh Assembly Government (WAG) concerning new guidance for dealing with joint complaints at Stage 1 of the NHS and Social Services complaints procedures. An increasing number of people have been using services that cross the health and social care sectors. The different complaints processes in these sectors risked causing confusion to users who wished to make a complaint. WAG looked at how to achieve better co-ordination in handling cross service complaints, and consulted on draft guidance on how to handle such complaints.
49. We warmly welcomed the general approach promoted in the guidance. In particular we welcomed the suggested single point of contact for the user, and the offer to make those elements which are compatible between the two complaints systems appear seamless to the complainant.
50. We considered that it might be useful for the guidance to contain information on which agency should take the lead in handling a complaint (for example, the agency with the most interest or the agency requested by the complainant). We also considered that the guidance needed to include procedures to ensure the sharing of findings and recommendations across the agencies.
51. A number of incompatibilities between the health and social services complaints systems continue to exist, preventing an entirely seamless approach. We considered this divergence to be unsustainable, and recommended that the issues ought to be considered by WAG and the Public Services Ombudsman for Wales as part of the proposals for a single complaints process for public services in Wales.

Review of Social Services Complaints Process

52. The Public Services Ombudsman for Wales is currently undertaking a wide-ranging review of the various complaints processes across public services in Wales, and it is expected that this review will clarify the future role of the Stage 3 complaints process used for complaints about social services in Wales. WAG had previously initiated and consulted on a review of the social services complaints process. Our main consideration, in responding to the consultation, was to ensure that no action should be taken that might cut across the conclusions or implementation of the wider Review. We considered that only problems of an “urgent and significant” or “quick and inexpensive” nature should be addressed.

53. We were pleased to note that some of the proposed actions could be easily co-ordinated with the Public Services Ombudsman for Wales in advance of his Review. For example, the action looking at “Learning from Complaints” and to “ensure that the reason for decisions made are explained more clearly” could be coordinated with the Public Services Ombudsman for Wales in the move towards developing common complaints approaches.
54. Several actions proposed by the consultation were identified to be of a medium or long term nature. These included: reviewing panel membership; developing better liaison between NHS and social services complaints systems; and considering structural changes to the complaints system. We advised that such actions should only be undertaken, if appropriate, as part of the Public Services Ombudsman for Wales led review.
55. The consultation also proposed that the review would undertake to clarify the Social Services Complaints Procedure Regulations. These Regulations are drafted in very general terms, according broad discretion to the Panel. We felt that clarification of these Regulations could not be carried out without a full-scale revision, which would be inappropriate at this stage.

Independent Review of Determination Panels – Adoption Panels Guidance

56. Independent Review of Determination Panels were established under the Independent Review of Determinations (Adoption)(Wales) Regulations 2006. The Regulations create for individuals the right to request an independent review should they not be approved as prospective adopters. Members of the Committee observed several early proceedings and initially raised a number of serious concerns. We followed up our concerns with two visits during 2009-2010 and remained concerned about the lack of procedural guidance to panels. We welcomed the opportunity this year to take another look at the operation of these Panels and in summer 2009 submitted comments on the draft Guidance to Panel Members.
57. We suggested that a formal process of case management should be developed, allowing for the identification of key issues and consideration of the need for any additional evidence in advance of the panel meeting. We felt that such issues would be best resolved prior to the hearing. We also suggested that the Guidance should indicate the time-scales for the production of additional evidence.
58. We were concerned that the Guidance did not contain an explicit statement as to whether or not legal advisers take part in the decision making of the panel. We felt that such a clear statement was necessary to avoid an ambiguity.
59. A further point related to the indication in the Regulations that the whole review process should take no more than three months. The Guidance made reference to the possible adjournment of the process. We considered, in view of the impact of delay on the lives of those concerned, that any such adjournment should not take the review over this three month limit.

60. A more general point was that it might be useful to provide some guidance on how the review hearing itself ought to be conducted. Although we appreciate that the exact manner in which a hearing is conducted will depend on the parties and facts involved, some basic guidance on matters such as whether parties can be called by the Panel more than once would be helpful.
61. This Guidance has since been superseded by new Regulations and WAG has outsourced the provision of the mechanism to British Association for Adoption and Fostering (BAAF).

Independent Review of Determination Panels – Fostering

62. The new Regulations as mentioned above include provisions for independent reviews of fostering decisions in addition to those concerning adoption. In September 2009 the Committee responded to a consultation on this matter, and agreed with the general approach of giving proposed foster carers similar appeal rights as proposed adopters.
63. We expressed concern at the proposal to charge fostering service providers a contribution towards the cost of a review, as we were concerned that this might create a perverse incentive to fostering service providers to approve borderline applications in order to avoid the cost of a review.
64. Although we agreed that the panel should be made up of 5 members, we queried the decision not to require that the panel include a registered practitioner.
65. As with adoption determination panels, fostering review panels are now being run by BAAF. We will continue to monitor how both processes operate.

Education (Wales) Measure 2009

66. In June 2009 we responded to a consultation on the proposed Education (Wales) Measure. The proposed Measure aimed to give children the right to appeal to the Special Educational Needs Tribunal for Wales (SENTW) themselves and the right to make a disability discrimination claim to the SENTW themselves, which the Committee fully supported. We think it is important that children have this right, especially where the children concerned are 'looked-after' children.
67. We also welcomed the requirement in the proposed Measure for local authorities to inform children of their right to appeal and make a claim, to make arrangements for partnership and disagreement resolution services and specialist independent advocacy services. We felt that unless a child had adequate help and support it would be unlikely that they would be able to exercise their right of appeal. Therefore, we noted that adequately resourced advocacy, support and representation services would be essential.

68. Under the Education (Wales) Measure 2009, a child will have the right to make disability discrimination claims regarding temporary exclusion from a maintained school to SENTW but will have no such corresponding right in relation to disability discrimination claims regarding a permanent exclusion from a maintained school. We understand that section 52 of the Education Act 2002 and regulations made under that provision currently require local authorities to make arrangements to enable a person to appeal to a panel against permanent exclusion from a maintained school. We further understand that claims of disability discrimination in relation to permanent exclusion from a maintained school must be dealt with under those arrangements. The Committee considers that SENTW, as an independent tribunal, would be best placed to have overall jurisdiction for claims of disability discrimination, as it includes a legally qualified chair, supported by lay members requiring experience and knowledge of SEN and/or disability, and is thus well equipped to deal with the complex nature of these types of cases. Exclusion Panels, however, are exclusively lay in their constitution and may have difficulty in dealing with the complicated issues that are in discussion at such appeals. We will continue to seek changes in this part of the system.

Review of the Regulations for the Valuation Tribunal for Wales

69. In January 2009 we responded to a WAG consultation on draft Regulations for Valuation Tribunals in Wales. While welcoming the proposal for a single Valuation Tribunal for Wales, we did not feel that the proposed changes were sufficient to meet modern expectations of judicial independence.
70. We raised three particular points relating to this concern. First, we felt strongly that the roles of President and Regional Representatives should be filled on the basis of openly and independently assessed merit, and not simply on the vote of tribunal members. Second, tribunal members themselves should also be recruited through an independent merit selection process. Third, we considered that the process of reducing the number of panel members – as discussed in the consultation – would not be robust enough to ensure that members sit sufficiently to ensure development of expertise and consistent decision making.
71. We also expressed concern that the provisions relative to the structure and functions of the Governing Council would not allow for independent oversight of the tribunal, given that only one member of the Council would be appointed from outside the system. Additionally, the provisions allowing the Chief Executive also to be the Clerk to the tribunal would create a potential conflict of interest.
72. We were disappointed that the changes implemented did not include responses to our very real concerns. We remain of the view that Valuation Tribunals, as presently organised in Wales, do not conform with the expectations of well managed tribunals advocated by the AJTC and believe that further reform is needed as a matter of priority if the possibility of user challenge is to be avoided.

Appendix A : Membership of the Welsh Committee of the AJTC

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

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

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

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

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

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

Appendix B : The Costs of the Welsh Committee

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

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

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

² Members of the Welsh Committee receive, as at 1st August 2009, a retainer of £6,408 based on 22 days work per year. The Committee Chairman receives a salary of £28,025 including his service on the AJTC and is accounted for in its Annual Report.

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

⁴ Cost of hiring rooms etc for meetings of the committee.

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

⁶ Administrative costs are met by the AJTC and cannot be separately identified.

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

Appendix C : Meetings and Tribunal Visits

Welsh Committee meetings

19 June 2009

17 and 18 September 2009

2 December 2009

23 March 2010

Tribunal Visits

May 2009 Traffic Penalty Tribunal

May 2009 Adjudication Panel for Wales

May 2009 National Health Service Inquiries

May 2009 Independent Review of Determination Panel

August 2009 School Admission Appeal Panels

October 2009 Independent Review of Determinations Panel

October 2009 Adjudication Panel for Wales

October 2009 School Exclusion Appeal Panels

January 2010 Social Security and Child Support Appeals Tribunal

February 2010 Social Security and Child Support Appeals Tribunal

March 2010 Social Security and Child Support Appeals Tribunal

Stakeholder Meetings

April 2009	Public Services Complaints Review Meeting
April 2009	Head of Welsh Local Government Association
April 2009	Lord Chancellor's Standing Committee on the Welsh Language
May 2009	Public Services Policy and Delivery Team, WAG
June 2009	SENTW User Group
June 2009	Office of Social Research
June 2009	Children's Commissioner
June 2009	School Exclusion policy officials, WAG
July 2009	Deputy Director, Social Research Division
September 2009	Employment Tribunal User Group
September 2009	Chief Executive Valuation Tribunal Service for Wales
September 2009	Children's Commissioner
October 2009	Minister for Health and Social Services
October 2009	SENTW Use Group
October 2009	First Minister for Wales

Conferences and Events

May 2009	Special Educational Needs Tribunal Wales Conference
May 2009	Legal Services Board Events
July 2009	Welsh Justice Network Seminar
December 2009	Adjudication Panel for Wales Training Event
March 2010	Public Law and Judicial Review Administrative Justice in Wales
March 2010	All Wales Complaints Officer Group Meeting

Cyfarfoddydd â Rhanddeiliaid	
Ebrill 2009	Cyfarfod Adolygu Cwynion Gwasanaethau Cyhoeddus
Ebrill 2009	Pennaeth Gymdeithas Llywodraeth Leol Cymru
Ebrill 2009	Pwyllgor Sefydlog yr Arglwydd Ganghellor ar yr Iaith Gymraeg
Mai 2009	Tîm Polisi a Chyflawni Gwasanaethau Cyhoeddus, Llywodraeth Cynulliad Cymru
Mehefin 2009	Grŵp Defnyddwyr Tribiwnlys Anghenion Addysgol Arbenig Cymru
Mehefin 2009	Swyddfa Ymchwil Gymdeithasol
Mehefin 2009	Y Comisiynydd Plant
Mehefin 2009	Swyddogion polisi Gwaharddiadau Ysgol, Llywodraeth Cynulliad Cymru
Gortfennaf 2009	Dirprwy Gyfarwyddwr, yr Is-adran Ymchwil Gymdeithasol
Medi 2009	Grŵp Defnyddwyr Tribiwnlys Cyflogaeth
Medi 2009	Prif Weithredwr Gwasanaeth Tribiwnlys Priso Cymru
Medi 2009	Y Comisiynydd Plant
Hydref 2009	Y Gweinidog dros Iechyd a Gwasanaethau Gymdeithasol
Hydref 2009	Grŵp Defnyddwyr Tribiwnlys Anghenion Addysgol Arbenig Cymru
Hydref 2009	Prif Weinidog Cymru
Cynadleddau a Digwyddiadau	
Mai 2009	Cynhadledd Tribiwnlys Anghenion Addysgol Arbenig Cymru
Mai 2009	Digwyddiadau'r Burdd Gwasanaethau Cyfreithiol
Gortfennaf 2009	Seminar Rhwydwaith Cyfiau Cymru
Rhagfyr 2009	Digwyddiad Hyfforddi Panel Dyfarnu Cymru
Mawrth 2010	Cyfraith Gyhoeddus ac Adolygiad Barnwrol Cyfiau Cymru
Mawrth 2010	Gweinidog yng Nghymru
Mawrth 2010	Cyfarfod Grŵp Swyddogion Cwynion Cymru Gyfan

Atodiad C : Cyfarfoddd ac Ymweliadau â Thribiwilysoedd

Cyfarfoddd y Pwyllgor Cymreig	19 Mehefin 2009
	17 a 18 Medi 2009
	2 Rhagfyr 2009
	23 Mawrth 2010
Ymweliadau â Thribiwilysoedd	
Mai 2009	Tribiwilyys Cosbau Traffig
Mai 2009	Panel Dyfarnu Cymru
Mai 2009	Ymchwiliadau'r Gwasanaeth Iechyd Gwladol
Mai 2009	Panel Adolygiad Annibynnol o Ddyfarniadau
Awst 2009	Panel! Apeliadau Derbyniadau Ysgol
Hydref 2009	Panel Adolygiad Annibynnol o Ddyfarniadau
Hydref 2009	Panel Dyfarnu Cymru
Hydref 2009	Panel! Apeliadau Gwaharddiadau Ysgol
Ionawr 2010	Tribiwilyys Apeliadau Nawdd Gymdeithasol a Chymnal Plant
Chwefror 2010	Tribiwilyys Apeliadau Nawdd Gymdeithasol a Chymnal Plant
Mawrth 2010	Tribiwilyys Apeliadau Nawdd Gymdeithasol a Chymnal Plant

Atodiad B : Costau Pwyllgor Cymru

Ariennir Pwyllgor Cymru drwy'r Cyngor Cyfiawnder Gweinyddol a Thribiwnlysoedd, sydd yn ei dro yn cael ei ariannu gan y Weinyddiaeth Gyfiawnder. Ariennir rhai costau, megis swyddfeydd, TG a gwasanaethau cyfrifyddu/gyflwges yn ganolog ac nid ydynt wedi'u cynnwys yn y cyfrif isod. Penderfynir ar gostau eraill, megis cyfraddau cyflog staff, yn ganolog ond fe'u telir o gyllideb y Cyngor Cyfiawnder Gweinyddol a Thribiwnlysoedd. Mae'r Pwyllgor yn cael ei gynorthwyo o Lundain ac mae'r costau staff isod yn seiliedig ar yr amcangyfrif gorau o gyflwges/costau staff asiantaeth wedi'u dosrannu yn ôl amser a roddir i'r Pwyllgor. Mae costau 2008-2009 yn ymwneud â chyfnod o 10 mis.

Costau'r Pwyllgor Cymru		2008/09	2009/10
(10 mis)			
Costau Staff ¹		47,315	50,479
Taliadau Cadw Helodau ²		14,242	19,385
Costau Teithio Helodau ac ati ³		4,076	4,840
Costau Cyfarfoddydd ⁴		2,430	2,581*
Costau Cynadledau ⁵		—	4,101*
Costau Gweinyddol, gan gynnwys cyflenwadau swyddfa, stampiau ⁶		—	—
Cyfansymiau		68,063	81,386*

- 1 Mae aelod o staff a leolir yn Lundain yn gweithredu fel Ysgrifennydd Pwyllgor Cymru ac yn rhoi cymorth gweinyddol arall.
- 2 O Iaf Awst 2009, mae aelodau Pwyllgor Cymru yn cael tâl cadw o £6,408 yn seiliedig ar 22 diwrnod o waith y flwyddyn. Mae Cadeirydd y Pwyllgor yn cael cyflog o £28,025 gan gynnwys ei wasanaeth ar y Cyngor Cyfiawnder Gweinyddol a Thribiwnlysoedd a rhoddir cyfrif amdano yn ei Adroddiad Blyneddol.
- 3 Treuliau aelodau i fynychu cyfarfoddydd y Pwyllgor, ymweld â thribiwnlysoedd a mynd i ddiwyddiadau eraill.
- 4 Cost llogi ystafelloedd ac ati ar gyfer cyfarfoddydd y pwyllgor.
- 5 Cost Cynhadledd Pwyllgor Cymru 'Cyfiawnder Gweinyddol' yng Nghymru: Canolbwyntio ar y Dinesydd.
- 6 Telir costau gweinyddol gan yr AJTC ac ni ellir eu nodi ar wahân. Oherwydd cyfyngiadau fformatau adrodd gwahanol nid yw'r gwariant o dan droednodoladau 4 a 5 wedi'i nodi ar wahân yn y tabl costau yn Adroddiad Blyneddol yr AJTC ar gyfer 2009/10, ond yn hytrach mae wedi'i gynnwys yn y cyfanswm cyffredinol ar gyfer "costau gweinyddol eraill" yr AJTC.

Atodiad A : Helodaeth o Buyllogr Cymeru'r Cyngor Cyfiawnder Gweinyddol a Thribiwnlysoedd

Yr Athro Syr Adrian Webb (Cadeirydd): Is-Ganghellor Cynataf Pritfysgol Morgannwg rhwng 1992 a 2005. Cadeirydd, Ymddiriedolaeth GIG Pontypridd a Rhondda; Cyfarwyddwr Anweithredol Llywodraeth Cynulliad Cymru tan fis Mawrth 2008.

Cadeirydd Burdd Gyflogaeth a Sgiliau Cymru a Chomisiynydd Cymru ar Gomisïwn y DU dros Gyflogaeth a Sgiliau. Helod o'r AJTC ers mis Mai 2008 a Chadeirydd Buyllogr Cymru ers mis Mehefin 2008.

Bob Chapman: Ymgyng'horydd rheoli rhan-amser sy'n gweithio'n benaf yn y sector cyfreithiol, ac aelod o Fwrdd Llais Defnyddwyr Cymru. Ar ôl gweithio am 25 mlynedd ym maes gwaith cyngor mewn Canolfannau Cyngor ar Bopeth ac Unedau Hawliau Lles awdurdodau lleol ymunodd â'r Comisïwn Gwasanaethau Cyfreithiol lle daeth yn Gyfarwyddwr Cymru Dros Dro cyn ymddedol yn gyfnar.

Gareth Lewis: Helod o'r Tribiwnlys Apêl Cyflogaeth ac Helod o Gyngor Pritfysgol Cymru. Bu gynt yn Gyfarwyddwr rhan-amser Swyddfa Dyfarnwr Annibynnol Addysg Uwch, Ysgrifennedd Coleg Pritfysgol Caerdydd a Dirprwy Britathro a Chlerc Burdd Coleg Brenhinol Cerd a Drama Cymru.

Rhian Williams-Flew: Nyrs iechyd meddwl gymwysedig a gweithiwr gymdeithasol cofrestredig. Mae'n Gomisïynywr Deddf Iechyd Meddwl i'r Comisïwn Answydd Gofal, Adolygur Deddf Iechyd Meddwl i Arolygiaeth Gofal Iechyd Cymru ac aelod o'r Tribiwnlys Haen Gyntaf (Iechyd Meddwl) yn Lloegr. Bu gynt yn ymchwilydd llawrdd i gwynion a wnaed gan ddefnyddwyr gwasanaethau gymdeithasol a gofalwyr ac yn Arolygydd Rheoliadol dros y Comisïwn Arolygu Gofal Gymdeithasol.

Peter Tyndall: Ombudsmon Gwasanaethau Cyhoeddus Cymru. Helod *ex officio* o Buyllogr Cymru'r AJTC. Ef oedd Prif Weithredwr Cyngor Celfyddydau Cymru rhwng 2001 a 2008 a chyn hynny bu'n Bennaeth Addysg a Materion Diwyllianol yng Nghymdeithas Llywodraeth Leol Cymru.

Ann Abraham: Ombudsmon Senedd y DU ac Ombudsmon Gwasanaethau Iechyd Lloegr. Helod *ex officio* o'r AJTC a'i Buyllograu yng Nghymru a'r Alban. Helod *ex officio* o'r Comisïwn dros Weinyddu Lleol yn Lloegr.

69. Ym mis Ionawr 2009 gwnaethom ymateb i ymgynghoriad Llywodraeth y Cynulliad ar Reoliadau drafft ar gyfer Tribiwyllysodd Priso yng Nghymru. Er ein bod yn croesawu'r cynnig i gael un Tribiwyllys Priso i Gymru, nid oeddem o'r farn bod y newidiadau arfaethedig yn ddigonol i fodloni disgwyliadau modern ynghylch annibyniaeth y farnwriaeth.
70. Codwyd tri phwynt penodol gennyf mewn perthynas â'r pryder hwn. Yn gyntaf, roeddem yn gadarn o'r farn y dylai rolau'r Llywydd a'r Cynrychiolwyr Rhanbarthol gael eu llenwi ar sail teilyngdod wedi'i asesu'n agored ac yn annibynnol, ac nid dim ond yn ôl pleidlais aelodau'r tribiwyllys. Yn ail, dylai aelodau'r tribiwyllys eu hunain gael eu recriwtio drwy broses ddethol annibynnol ar sail teilyngdod. Yn drydydd, roeddem o'r farn na fyddai'r broses o leihau nifer aelodau panel – fel y trafodwyd yn yr ymgynghoriad – yn ddigon cadarn i sicrhau bod aelodau'n cyfarfod yn ddigon amf i sicrhau y caiff arbenigedd a phroses gyson o wneud penderfyniadau eu datblygu.
71. Gwnaethom hefyd fynegi pryder na fyddai'r darpariaethau mewn perthynas â strwythur a swyddogaethau'r Cyngor Llywodraethu yn caniatáu ar gyfer gornchwyllo'r tribiwyllys yn annibynnol, gan mai dim ond un aelod o'r Cyngor a fyddai'n cael ei benodi o'r tu allan i'r system. Yn ychwanegol, byddai'r darpariaethau sy'n caniatáu i'r Pritf Uleithredur hefyd weithredu fel Clerc i'r tribiwyllys yn creu gwrthdaro buddiannau posibl.
72. Roeddem yn siomedig nad oedd y newidiadau a weithredwyd yn cynnwys ymatebion i'n pryderon gwirioneddol. Rydym o'r farn o hyd nad yw Tribiwyllysodd Priso, fel y maent wedi'u trefnu yng Nghymru ar hyn o bryd, yn cydymffurfio â'r disgwyliadau o ran tribiwyllysodd a reoliwyd yn dda a hybiri gan yr ALTC ac rydym o'r farn bod angen diwygiadau pellach ar frys er mwyn osgoi'r posibilrwydd o her gan ddefnyddiwr.

Mesur Addysg (Cymru) 2009

- 66. Ym mis Mehefin 2009 guanaethom ymateb i ymgynghoriad ar y Mesur Addysg (Cymru) arfaethedig. Nod y Mesur arfaethedig oedd rhoi'r hawl i blant apelio i Dribiwnlys Anghenion Addysgol Arbenig Cymru eu hunain, a'r hawl i wneud hawliad gwahaniaethu ar sail anabedd i'r Tribiwnlys humnu eu hunain, sef hawliau a gefnogwyd yn llawn gan y Pwyllgor. Rydym o'r farn ei bod yn bwysig bod gan blant yr hawl hon, yn enwedig os mai 'plant sy'n derbyn gofal' sydd dan sylw.
- 67. Guanaethom hefyd groesawu'r gofyniad yn y Mesur arfaethedig i awdurdodau lleol hysbysu plant o'u hawl i apelio a gwneud hawliad, i wneud trefniadau ar gyfer gwasanaethau partneriaeth, gwasanaethau datrys anghydfodau a gwasanaethau eiriolaeth annibynnol arbenigol. Roeddem o'r farn oni bai bod gan blentyn help a chymorth ddigonol y byddai'n annhebygol o allu arfer ei hawl i apelio. Felly, nodwyd genym y byddai gwasanaethau eiriolaeth, cymorth a chymrychiolaeth ag adnoddau digonol yn hanfodol.
- 68. O dan Fesur Addysg (Cymru) 2009, bydd gan blentyn yr hawl i wneud hawliadau gwahaniaethu ar sail anabedd i Dribiwnlys Anghenion. Tribiwnlys Anghenion Addysgol Arbenig Cymru, fel tribiwnlys annibynnol, fyddai yn y sefyllfa orau i gael awdurdodaeth gyffredinol am hawliadau o wahaniaethu ar sail anabedd, gan ei fod yn cynnwys cadeirydd a chywmysterau cyfreithiol, wedi'i gefnogi gan aelodau lleig y mae'n ofynnol i ddynnt feddau ar brofiad a gwybodaeth am RHG a/neu anabedd, ac felly mae mew sefyllfa dda i ymdrin â natur gymhleth y mathau hyn o achosion. Fodd bynnag, dim ond aelodau lleig sydd ar Baneli Gwaharddiadau a gallant gael anhawster o ran ymdrin â'r materion cymhleth a drafodir mewn apelladau o'r fath. Byddwn yn parhau i geisio sicrhau newidiadau i'r rhan hon o'r system.

59. Roedd pwynt pellach yn ymwneud â'r nodyn yn y Rheoliadau na ddyl'r broses adolygu gyfan gymryd mwy na thri mis. Cyfeiriodd y Canllawiau at y posibilrwydd o ohirio'r broses. Roeddem o'r farn, ohriad o'r fath olygu bod yr adolygiad yn parhau y tu hwnt i'r terfyn tri mis hwn.
60. Pwynt mwy cyffredinol oedd y gallai fod yn ddefnyddiol darparu rhai canllawiau o ran sut y dylid cynnal gwarandawiaid yr adolygiad ei hun. Er ein bod yn gwerthfawrogi y bydd yr union ffordd y caiff gwarandawiaid ei gynnal yn dibynnu ar y partition a'r ffeithiau dan sylw, byddai rhai canllawiau syffaeol ar faterion megis a all y Panel ailw partition fwy nag unwaith yn ddefnyddiol.
61. Ers hynny disodlwyd y Canllawiau hyn gan Reoliadau newydd, ac mae Llywodraeth y Cynulliad wedi rhoi'r gwaith o ddarparu'r system ar gcontract allanol i Gymddeithas Mabwysiadu a Maethu Prydain.
62. Mae'r Rheoliadau newydd y soniwyd amdanynt uchod yn cynnwys darpariaethau ar gyfer adolygiadau annibynnol o benderfyniadau maethu yn ogystal â'r rhai sy'n ymwneud â mabwysiadu. Ym mis Medi 2009 ymatebodd y Pwyllgor i ymgynghoriad ar y mater hwn, a chytunodd â'r dull cyffredinol o roi hawliau apel tebyg i ddarparu ofalwyr maeth ag sydd gan ddarpar fabwysiadwyr.
63. Mynegwyd pryderon gennyf ynghlyn â'r cynnig i godi tali ar ddarparwyr gwasanaethau maethu am gyfraniad tuag at gost adolygiad, gan ein bod yn pryderu y gallai hyn greu cymhelliant gwrthnysig i ddarparwyr gwasanaethau maethu gymradowy ceisiadau ffiniol er mwyn osgoi cost adolygiad.
64. Er ein bod yn cytuno y dylai'r panel gynnwys pum aelod, roeddem yn amau'r penderfyniad i beidio â'i gwneud yn ofynnol i'r panel gynnwys ymarferdd cofrestredig.
65. Fel gyda phaneli dyfarniadau mabwysiadu, mae paneli adolygu maethu bellach yn cael eu rhedeg gan Gymddeithas Mabwysiadu a Maethu Prydain. Byddwn yn parhau i fonitro sut y mae'r ddyw broses yn gweithredu.

Panel Adolygiad Annibynnol o Ddyfarniadau – Maethu

- 58. Roedd yn peri pryder i ni nad oedd y Canllawiau'n cynnwys datganiad penodol o ran p' un a yw cynghorwyr cyfreithiol yn cymryd rhan ym mhroses benderfynu'r panel. Roeddem o'r farn fod datganiad clir o'r fath yn angenrheidiol er mwyn osgoi amwysedd.
- 57. Gwnaethom awgrymu y dylid datblygu proses ffurfiol o reoli achosion, sy'n caniatáu ar gyfer nodi materion allweddol ac ystyried yr angen am unrhyw dystiolaeth ychwanegol cyn cyfarfod y panel. Roeddem o'r farn y byddai'n well datrys materion o'r fath cyn y gwrandawriad. Gwnaethom awgrymu hefyd y dylai'r canllawiau nodi'r amserlen ni ar gyfer cynhyrchu dystiolaeth ychwanegol.
- 56. Sefydlwyd Paneli Adolygiad Annibynnol o Ddyfarniadau o dan Reoliadau Adolygu Penderfyniadau'n Annibynnol (Mabwysiadu) (Cymru) 2006. Mae'r Rheoliadau'n creu'r hawl i unigolion wneud cais am adolygiad annibynnol os na chânt eu cymeradwyo fel darpar fabwysiadwyr. Arsylwodd Helodau'r Pwyllgor ar nifer o'r gweithredadau cynnar, ac i ddechrau codwyd nifer o bryderon difrifol. Oherwydd ein pryderon gwnaethom ddau ymweliad yn ystod 2009-10, ac roeddem yn parhau i bryderu ynglŷn â'r ffath nad oedd canllawiau gweithdrefnol gan y paneli. Gwnaethom groesawu'r cyfie eieni i ailystyried gweithrediad y Paneli hyn, ac yn haf 2009 cyflwynwyd sylwadau gennyf ar y Canllawiau drafft i Helodau'r Paneli.

Paneli Adolygiad Annibynnol o Ddyfarniadau – Canllawiau Paneli Mabwysiadu

- 55. Yn ogystal, cynigodd yr ymgynghorïad y byddai'r adolygiad yn ceisio egluro Rheoliadau Gweithdrefn Gwyno Gwasanaethau Cymdeithasol, Cafft y Rheoliadau hyn eu drafftio yn nhermau cyffredinol iawn, yn unol â disgrisiwn eang y Panel. Roeddem o'r farn na ellid egluro'r Rheoliadau hyn heb eu diwygio'n llwyr, na fyddai'n briodol ar hyn o bryd.
- 54. Nodwyd bod nifer o'r camau gweithredu a gynigwyd gan yr ymgynghorïad o natur tymor canolig neu hirdymor. Ymhlith y rhain roedd: adolygu aelodaeth y panel; datblygu gwell cyswilt rhwng systemau cwyno'r GIG a gwasanaethau cymdeithasol; ac ystyried newidiadau strwythurol i'r system gwyno. Ein cyngor oedd mai dim ond fel rhan o'r adolygiad a arweinir gan Ombudsmon Gwasanaethau Cyhoeddus Cymru y dylid cymryd camau o'r fath, os oeddent yn briodol.
- 53. Roeddem yn falch o nodi y gellid cydgyysylltu rha'i o'r camau arteffhedig yn hawdd ag Ombudsmon Gwasanaethau Cyhoeddus Cymru cyn ei Adolygiad. Er enghraifft, gellid cydgyysylltu'r cam gweithredu sy'n ystyried "Dysgu o Gwynion" a "sicrhau yr eglurir y rhesymau dros benderfyniadau yn gliriach" ag Ombudsmon Gwasanaethau Cyhoeddus Cymru wrth symud tuag at ddatblygu dulliau cyffredin o ymdrin â chwynion.

Canllawiau Drafft ar Ymdrin â Chwynion ar Y Cyd ym maes Iechyd a Gofal Cymdeithasol

48. Cysylltwyd â'r Pwyllgor gan swyddogion o Lywodraeth Cynulliad Cymru o ran canllawiau newydd ar gyfer ymdrin â chwynion ar y cyd ar Gam 1 gweithdrefnau cwyno'r Galg a Gwasanaethau Cymdeithasol. Bu nifer cynyddol o bobl yn defnyddio gwasanaethau sy'n croesi'r sectorau iechyd a gofal cymdeithasol. Roedd y prosesau cwyno gwahanol yn y sectorau hyn yn peri'r nisg o achosi dryswch i ddefnyddwyr a oedd yn dymuno gwneud cwyn. Ystyriodd Lywodraeth y Cynulliad sut i gydgyssylltu cwynion ar draws gwasanaethau yn well, a chynhaliodd ymgynghoriaid ar ganllawiau drafft ar sut i ymdrin â chwynion o'r fath.

49. Gwnaethom groesawu'r dull cyffredinol a hyrwyddwyd yn y canllawiau. Yn benodol, gwnaethom groesawu'r awgrym i gael un pwynt cyswilt ar gyfer y defnyddwyr, a'r cynnig i wneud i'r elfennau hynny sy'n gydnaws rhwng y ddwy system gwyno ymddangos yn ddi-dor i'r achwynydd.

50. Roeddem o'r farn y gallai fod yn ddefnyddiol i'r canllawiau gynnwys gybybodol am ba asiantaeth a ddylai arwain y broses o ymdrin â chwyn (er enghraifft, yr asiantaeth â'r diddordeb myaf neu'r asiantaeth y gofynnwyd amdani gan yr achwynydd). Roeddem hefyd o'r farn bod angen cynnwys gweithdrefnau i sicrhau y caiff canfyddiadau ac argymhellion eu rhanu ar draws yr asiantaethau.

51. Mae nifer o anghysondebau'n parhau rhwng y systemau cwyno ym meysydd iechyd a gwasanaethau cymdeithasol, gan atal dull hollol ddi-dor. Roeddem o'r farn nad oedd y gwahaniaeth hwn yn gynaliadwy, a gwnaethom argymhell y dylai'r materion gael eu hystyried gan Lywodraeth y Cynulliad ac Ombudsmon Gwasanaethau Cyhoeddus Cymru fel rhan o'r cynigion ar gyfer un broses gwyno ar gyfer gwasanaethau cyhoeddus yng Nghymru.

Adolygiad o Broses Gwyno Gwasanaethau Cymdeithasol

52. Ar hyn o bryd mae Ombudsmon Gwasanaethau Cyhoeddus Cymru yn cynnal adolygiad eang o'r prosesau cwyno amrywiol ar draws gwasanaethau cyhoeddus yng Nghymru, a'r disgwyl yw y bydd yr adolygiad hwn yn egluro rôl y broses gwyno Cam 3, a ddefnyddir ar gyfer cwynion am wasanaethau cymdeithasol yng Nghymru, yn y dyfodol. Roedd Lywodraeth y Cynulliad wedi dechrau adolygiad o broses gwyno gwasanaethau cymdeithasol yn flaenorol. Ein prif ystyriaeth, wrth ymateb i'r ymgynghoriaid, oedd sicrhau na ddylid cynryd unrhyw gamau a allai dorri ar draws casgliadau'r adolygiad ehangach, neu weithrediad yr adolygiad hwnnw. Roeddem o'r farn mai dim ond problemau o natur "frys a phwysig" neu "gyflym a rhad" y dylid mynd i'r afael â hwy.

Amcan 3: Ymateb yn awdurdodol i faterion sy'n codi a chynigion

EIN RÔL

Fe'n penodwyd gan Weinidogion Cymru⁹ i wneud y canlynol wrth arfer ein swyddogaethau statudol:

- ymateb i ymgynghoriadau ar reolau gweithdrefnol ar gyfer tribuniwlysoedd ag awdurdodaeth yng Nghymru¹⁰
- ymateb i ymgynghoriadau ar reolau gweithdrefnol ar gyfer ymchwiliadau statudol a gynhelir yng Nghymru¹¹
- craffu ar ddeddfwriaeth, sy'n bodoli eisoes neu sy'n arfaethedig, sy'n ymwneud â thribuniwlysoedd sy'n gweithredu yng Nghymru a gwneud sylwadau arni¹².

Mae elfen fawr o'n gwaith yn adweithiol, mewn ymateb i wath a wneir gan eraill ar y system cyfiawnder gweinyddol, tribuniwlysoedd ac ymchwiliadau. Wrth gyflawni ein rôl o gynghori Gweinidogion Cymru a'r Arglwydd Ganghellor ar gyfiawnder gweinyddol, tribuniwlysoedd ac ymchwiliadau yn Nghymru, byddwn yn ymateb yn adeiladol ac yn awdurdodol i ymgynghoriadau statudol perthnasol ac ymgynghoriadau eraill.

EIN BLAENORIAETHAU

- Er myn cyflawni Amcan 3, ein prif flaenoriaethau yn 2009-10 oedd: Nodi ac ymateb fel y bo'n briodol i ddeddfwriaeth ddrafft yng Nghymru ac sy'n ymwneud â Chymru
- Ymateb i ymgynghoriadau cyhoeddus a mentrau eraill yng Nghymru.

⁹ Deddf Tribuniwlysoedd, Llysoedd a Gorfodaeth 2007, Atdolien 7, a7.

¹⁰ Deddf Tribuniwlysoedd, Llysoedd a Gorfodaeth 2007, Atdolien 7, para 24

¹¹ Deddf Tribuniwlysoedd ac Ymchwiliadau 1992, a9, fel y'i diwygwyd gan Ddeddf Tribuniwlysoedd, Llysoedd a Gorfodaeth 2007, Atdolien 8, para 28

¹² Deddf Tribuniwlysoedd, Llysoedd a Gorfodaeth 2007, Atdolien 7, para 14(2)

42. Yn ogystal gwahodddwyd y Pwyllgor i fynd i'r sesiwn hyfforddiant ar gyfer aelodau'r Panel, lle y trafodwyd y ffordd o ddehongli'r Canllawiau newydd.

Gwrandawriadau Apeliadau Hddysg

43. Rwydym wedi manteisio ar y cyfle i fynd i sesiwn gwrandawriad Apêl Gwaharddiadau Ysgol a sesiwn gwrandawriad Apêl Derbyniadau Ysgol eileni. Roeddem yn falch bod y ddau wrandawriad yn deg ac yn agored, gyda phaneli a oedd wedi'u paratoi'n dda.

44. Yn y ddau achos roedd gennyf rai pryderon ynglyn â'r canfyddiad o annibyniâeth y broses apeli. Mewn un gwrandawriad, roedd aelodau'r panel hefyd yn llywodraethwyr ysgolion a weinyddwyd gan yr awdurdod lleol a oedd yn barti i'r apêl. Er nad yw hyn wedi'i wahardd gan y codau perthnasol, mae sefyllfa o'r fath yn perhysgu o greu canfyddiad o duedd.

45. Yn yr un modd, roedd y defnydd o gyflwyno awdurdod lleol dan sylw fel clerco yn peri pryder i ni. Noda Paragraph 3.13 o'r Cod Apeliadau Derbyniadau Hddysg:

"Dylai Awdurdodau Lleol a llywodraethwyr edrych y tu huntu i'w staff eu hunain fel arfer am bobl sydd â phrofiad perthnasol o weithio fel clerco pwyllgor proffesiynol neu fel cynghorydd cyfreithiol neu sydd â phrofiad o gynnal ymchwiliadau neu wrandawriadau disgyblu."

46. Byddwn yn parhau i ymweld â'r ddau fath o wrandawriad yn y flwyddyn i ddod a gweithio ochr yn ochr ag awdurdodau lleol i sicrhau eu bod yn cyflawni eu rhwymedigaethau er mwyn didueddruwydd y broses apeli.

Grwpiau Defnyddwyr Tribuniysedd

47. Roedd aelodau'r Pwyllgor yn falch o gael eu gwahodd i fynd i gyfarfoddd Grwpiau Defnyddwyr ar gyfer Anghenion Hddysgol Arbenig a Chyflogaeth yn 2009-10.

37. Byddun yn parhau i fonitro tribuniysodd Nawdd Cymdeithasol yn 2010/11 ond mae ein harsylwadau'n awgrymu bod hon yn system lle mae aelodau tribuniysodd yn ceisio gwneud eu gorau glas i roi gwarandawd teg ac amserol i gleientiaid yng ngwynneb llwyth gwaith cynyddol, oedi a phrin der adnoddau.

Panel Dyfarnu Cymru

38. Sefydlodd Rhan III o Ddeddf Llywodraeth Leol 2000 fframwaith newydd i sicrhau bod aelodau llywodraeth leol yng Nghymru a Lloegr yn cydymffurfio â safonau cyson. Yn sgîl y Ddeddf, efydlwyd pwyllgorau safonau lleol, caniatodd ar gyfer ymchwilio i achosion honedig o gamymddygiad gan Ombudsmon Gwasanaethau Cyhoeddus Cymru neu swyddogion monitro awdurdodau lleol a hefyd ar gyfer dyfarniadau ar unrhyw ymchwiliadau o'r fath gan bwyllgorau safonau lleol neu dribuniys wedi'i ffurfio o Banel Dyfarnu Cymru.

39. Ar ymweliad cynharach yn 2008-2009, roeddem wedi nodi'r anawsterau a wynebwyd gan dribuniysodd pan nad oedd Swyddog Cyfityno'r awdurdod lleol yn bresennol, gan fod hyn yn golygu weithiau fod yn rhaid i aelodau tribuniysodd fynd y tu hwnt i'r hyn y gellid ei ystyried yn rôl ymchwilio i arferol wrth iddynt geisio archwilio neu herio'r dystiolaeth a'r cyflwyniadau ger eu bron. Achosodd hyn rywfaint o bryder, gan ei fod yn per'i risg o furw amheuaeth ar ddiduedd rwydd y tribuniys. Yn ystod ein hymweliad cyntaf y flwyddyn ariannol hon cawsom wybod am y Rheoliadau diwygiedig drafft. Y bwriad oedd y byddai'r Rheoliadau hyn yn ehangu rôl Ombudsmon Gwasanaethau Cyhoeddus Cymru mewn gwarandawdiadau tribuniys gan ganiatáu iddo ef neu ei gynrychiolydd fynd i wrandawdiad yn ei wirfodd ei hun neu ar gais y panel, a chan ganiatáu iddo gymryd rhan y'i gradau a fernir yn briodol gan y pwyllgor safonau neu'r tribuniys. Yn flaenorol, dim ond at ddiben cyfityno ei adroddiad ar y mater dan sylw yr oedd Ombudsmon Gwasanaethau Cyhoeddus Cymru wedi mynd i wrandawdiadau.

40. Gwnaethom ymateb i'r ymgynghoriad cyhoeddus ar y mater, gan groesawu'r darpariaethau yn y Rheoliadau drafft. Oherwydd y duedd gynyddol am gynrychiolaeth gyfreithiol mewn gwarandawdiadau roeddem o'r farn ei bod yn bwysig bod Ombudsmon Gwasanaethau Cyhoeddus Cymru a'i swyddogion yn gallu chwarae rhan fwy gweithredol. Gwnaethom gytno y byddai'r Rheoliadau newydd yn cynorthwyo'r tribuniys neu'r pwyllgor safonau i ystyried yr adroddiad a'r dystiolaeth mewn modd cytbusys a thrwyadl.

41. Bethom i wrandawdiad tribuniys ar ôl i'r Rheoliadau gael eu cyfityno, ond cyn y cyhoeddwyd unrhyw ganllawiau terfynol gan Lwydd y Panel Dyfarnu. Er gwaethaf rhywfaint o ddrysych o ran union oblygiadau'r Rheoliadau newydd, roeddem o'r farn bod y newidiadau yn welliant ar y dreftn flaenorol. Roedd cynrychiolydd Ombudsmon Gwasanaethau Cyhoeddus Cymru yn gallu cyfityno'r ddadl ar y dduy ochr, ac roedd ei wybodaeth dechnegol a'i allu yn amlwg yn helpu'r tribuniys. Yn ogystal â golygu i'r gwarandawdiad gael ei gwblhau o fewn amserlen resymol a theg, roedd hefyd yn lleihau'r canfyddiad nad oedd y tribuniys yn ddiduedd.

31. Rhoddod y Barnur Wood ddatganiad clir i'r Pwyllgor o ran sut y sefydlwyd trefniadau presennol y tribuniysedd yn dilyn creu'r Gwasanaeth Tribuniysedd a Haen Gyntaf a Haen Uchaf Barnwriaeth y Tribuniysedd. Eglurodd fod gwrandawladau'n cael eu cynnal mewn lleoliadau ledled Cymru, gan nodi, oherwydd cynnydd sylweddol yn nifer y gwrandawladau, fod rhywfaint o gyfaddawdu bellach rhwng hygyrchedd ac ansawdd y lleoliad. Nododd fod nifer y sesiynau roedd eu hangen bron wedi dyblu rhwng 2007-08 a 2009-10.

32. Roedd peri pryder i ni glywed bod nifer y meddygon a oedd ar gael i gefnogi'r tribuniysedd yn rhy isel o lawer, ac mai prin oedd llwyddiant ymdrechion i recriwtio mwy (69 o benodiadau i lenwi 219 o swyddi gwag). Mae prinder aelodau meddygol wedi arwain at ochrio sesiynau tribuniys yn rheolaidd, sydd yn y pen draw yn peri anfantais i apelyddion gan fod oedi o ran gweinyddu cyfiawnder.

33. Roedd hefyd yn peri pryder i ni glywed bod cynrychiolaeth DUP mewn gwrandawladau yn lleihau o hyd. Nododd y Barnur Wood bod DUP arfer anfon cynrychiolydd i wrandawladau tribuniys, ond bod 2008 ac i tua 16% yn y flwyddyn gyfredol. Roedd yn argyhoeddedig bod y diffyg presenoldeb hwn wedi golygu nad oedd DUP wedi dysgu gwersi o'u camgymeriadau. Tynodd sylw at Adroddiad Blyneddol y Barnur Robert Martin, Llywydd y Siambr Hawi Gymdeithasol, a nododd fod tribuniysedd bellach, fel mater o drefn, yn clywed tystiolaeth am y tro cyntaf a ddylai fod wedi'i chasglu gan swyddogion DUP sy'n gwneud penderfyniadau.

34. Mewn ymateb i'r dystiolaeth hon, cynhaliodd y Pwyllgor dri ymweliad â thribuniysedd Nawdd Gymdeithasol ar ddechrau 2010. Ar sail ein harsylwadau, roeddem yn gallu cadarnhau cywirdeb y ddealltwriaeth a gynnigwyd gan ein dau westai:

- Cododd pryderon ar fwy nag un achlysur am ansawdd adroddiadau meddygol a'r defnydd a wnaed ohonynt ar gyfer hawliadau budd-daliadau nad ydynt yn gysylltiedig
- Codwyd y lleihad o ran argaeledd aelodau meddygol fel mater o buys gan bob un o'r paneli a welwyd gennyf
- Nid oedd swyddogion cyflwyno DUP wedi ymddangos yn unrhyw un o'r tribuniysedd yr ymwelsom â hwy.

35. Rhaid i'r sawl sy'n hawlio Lwfans Byw i'r Anabl allu disgrifio eu hiechyd fel yr oedd ar yr adeg y cyflwynwyd eu cais. Roeddem yn pryderu bod oedi sylweddol yn golygu bod y gofyniad hwn yn gosod gormod o faich ar hawlywr. Mewn un achos, roedd dyddiad gwreiddiol cans 18 mis cyn y gwrandawliad.

36. Cyflwynodd yr AJTC dystiolaeth ar y materion hyn i Ymchwilad Pwyllgor Gwaith a Phensynau Ty'r Cyffredin i'r broses o wneud penderfyniadau a chyflwyno apeliadau yn y system fudd-daliadau. Amlygwyd llawer o'r materion hyn yn adroddiad trefnol y Pwyllgor.

EIN GWETHHGREDDAU

Arlywi ar Wrandawiaidau

28. Yn 2009-10 gwnaethom ymweld ag ystod o driblunlyssoedd datganoliedig a rhai nas datganolwyd, a restrir yn Atodiad C. Gwnaethom ganolbwyntio ar awdurdodaethau penodol yn fwy nag yn 2008/09 wrth i'n gwyboddaeth am feysydd a allai beri problemau a meysydd o arfer gorau ddatblygu.

Apeliadau Nawdd Cymdeithasol

29. Ar ôl cwblhau'r Adolygiad o Driblunlyssoedd sy'n Gweithredu yng Nghymru, gwnaethom droi ein sylw at driblunlyssoedd nas datganolwyd yng Nghymru, ac apeliadau nawdd cymdeithasol yn benodol. Roeddem yn ddiolchgar bod Mrs Jackie Hankins, Rheolwr Hawliau Lles Uned Hawliau Lles Castell-nedd Port Talbot, ac wedyn y Barnwr Jim Wood, Barnwr Rhanbarthol, Tribiunlys Haen Gyntaf (Nawdd Cymdeithasol a Chynnal Plant) wedi gallu cyfarfod â'r Pwyllgor ym mis Rhagfyr 2009 i drafod apeliadau nawdd cymdeithasol.

30. Roedd Mrs Hankins wedi cynnal ymgynghoriad eang yn y gymuned Hawliau Lles, a chyflwynodd safbwynt cynhwysfawr ar apeliadau tribiunlyssoedd yn erbyn penderfyniadau yn ymwneud â budd-daliadau. Nododd nifer o bryderon am brosesau cyn, yn ystod ac ar ôl gwrandawiaidau tribiunlyssoedd, er bod ganddi bethau da i'w dweud, ar y cyfan, am y ffordd y cynhaliwyd y tribiunlyssoedd eu hunain. Ei phryderon penodol oedd:

- Gall fod oedi sylweddol o ran rhestru achosion
- Mae trefniadau hysbysiad a darparu papurau i gynrychiolwyr hawliau lles yn amrywiol
- Ceir gormod o ohiriadau gan fod meddyg y Tribiunlys yn adnabod y claf – dylid cadarnhau hyn ymlaen llaw
- Ceir canfyddiad cyffredin bod proses 'ailystyried' yr Adran Gwath a Phensynau (DWP) yn broses ofer gan mai prin yw'r penderfyniadau a newidir oherwydd tystiolaeth newydd. Yn aml mae'r un dystiolaeth yn sail apêl lwyddiannus mewn tribiunlys
- Mae DWP yn parhau i ddefnyddio tystiolaeth feddylgol a gafwyd i asesu un budd-dal i wneud dyfarniadau am fudd-dal arall er gwaetha'r ffaieth bod y profion cyfreithiol yn wahanol iawn
- Ceir pryderon y trinnir adroddiad yr Ymarferdd Meddygol sy'n Archwilio fel 'tystiolaeth annibynnol' er gwaetha'r ffaieth ei fod wedi'i gomisiynu gan DWP ar ffurfiennni DWP
- Anaml iawn y rhoddir caniatâd i apelio gan Farnwr y Tribiunlys, ond fe'i rhoddir bron bob tro wrth wneud cais pellach i'r Haen Uchaf.

Amcan 2: Adolygu gwaith y tribiwnlysoedd a'r ymchwiliadau sy'n gweithredu yng Nghymru

EIN RÔL

Fel'n penodwyd gan Weiniadogion Cymru⁴ i ymgymryd â'r swyddogaethau statudol a ganlyn:

- adolygu a chyflwyno adroddiadau ar gyfansoddiad y tribiwnlysoedd a restrir sy'n gweithredu yng Nghymru yn gyffredinol, a phob tribiwnlys o'r fath a'r ffordd y maent yn gweithredu⁵
 - ystyried a chyflwyno adroddiad ar unrhyw fater sy'n ymwneud â'r tribiwnlysoedd a restrir sy'n gweithredu yng Nghymru sydd o bwys arbennig yn ein barn ni
 - ystyried a chyflwyno adroddiad ar unrhyw fater penodol sy'n ymwneud â'r tribiwnlysoedd a gyfeirir atom gan Weiniadogion Cymru neu'r Arglwydd Ganghellor⁶
- Mae genym swyddogaethau tebyg mewn perthynas ag ymchwiliadau statudol⁷.

Mae genym hefyd yr hawl i fod yn bresennol (fel sylwedydd) yng ngweithrediadau tribiwnlys a restrir neu ymchwiliad statudol, gan gymysgu gwrandawliadau a gynhelir yn breifat a gweithreidiadau nad ydynt ar ffurf gwrandawliad.

EIN BLAENORIAETHAU

Er mwyn cyflawni Amcan 2, ein prif flaenoriaethau ar gyfer 2009-2010 oedd:

- Cytuno ar raglen o ymweliadau a chyfarfoddydd â rhanddeiliaid i hysbysu aelodau a thynnu sylw'r rhai sy'n ymwneud â'r tribiwnlysoedd at fodolaeth y Pwyllgor
- Arsyliw'r gwrandawliadau tribiwnlys datganoleddig a rhai nas datganoliwyd.

⁴ Deddf Tribiwnlysoedd, Llysoedd a Gorfodaeth 2007, Atdodlen 7, para 7.

⁵ Tribiwnlysoedd a restrir 'yw'r Tribiwnlys Haen Gyntaf ac Uwch Dribiwnlys a sefydlwyd gan Ddeddf Tribiwnlysoedd, Llysoedd a Gorfodaeth 2007 a thribiwnlysoedd a restrir drwy orchymnion a unaed gan yr Arglwydd Ganghellor, Gweinidogion Cymru a Gweinidogion yr Alban. Mae'n rhaid ymgynghori â'r Cyngor

⁶ Tribiwnlysoedd a restrir ac eithno'r Tribiwnlys Haen Gyntaf a'r Uwch Dribiwnlys. Cynycholir y Cyngor Gyfnder Gweinlyddol a'r Tribiwnlysoedd ar y Pwyllgor Gweithredu Tribiwnlysoedd sy'n gweunodol a'r Tribiwnlys Haen Gyntaf a'r Uwch Dribiwnlys. Cynycholir y Cyngor Gyfnder Gweithredu Tribiwnlys Haen Gyntaf a'r Uwch Dribiwnlys.

⁷ Deddf Tribiwnlysoedd, Llysoedd a Gorfodaeth 2007, Atdodlen 7, para 14.

⁸ Deddf Tribiwnlysoedd, Llysoedd a Gorfodaeth 2007, Atdodlen 7, para 15. Ystyr ymchwiliad statudol 'yw ymchwiliad neu wrandawliad a gynhelir gan neu ar ran Gweinidogion Cymru yn unol â dyletswydd statudol, neu ymchwiliad neu wrandawliad demisol a gynhelir ar ran Gweinidogion Cymru sydd wedi'i ddynodi gan orchymnion o dan Ddeddf Tribiwnlysoedd ac Ymchwiliadau 1992.

CYMRYCHIOLAETH AR GRWPIAU STRATEGOL

Pwyllgor Sefydlog yr Arglwydd Ganghelliwr ar yr Iaitth Gyrraeg

25. Mae un o'n haelodau yn aelod o Bwyllgor Sefydlog yr Arglwydd Ganghelliwr ar yr Iaitth Gyrraeg, a gynhaliodd gyfarfoddydd ym mis Ebrill a mis Hydref 2009. Diben y Pwyllgor Sefydlog yw sicrhau bod gwahanol gyfrff sy'n ymwneud â gweinyddu cyfiawnder yng Nghymru yn mabwysiadu polisiâu cyffredin ar gyfer yr Iaitth Gyrraeg a gweithredu Deddf yr Iaitth Gyrraeg 1993. Mae'n gyfrwng i leihau costau ac anawsterau yn ogystal â sicrhau bod arferion priodol ac unffurf ar waith. Mae'r Pwyllgor yn hybu dull cydgyssylltiedig o hyffordd! ym mhob un o'r sefydliadau sy'n ymwneud â gweinyddu cyfiawnder yng Nghymru; yn hwylyso rhannu arfer gorau rhwng asianataethau ac unigolion; ac yn rhoi cynngor i'r Arglwydd Ganghelliwr ar faterion sy'n ymwneud â'r defnydd o'r Gyrraeg wrth weinyddu cyfiawnder.

Grŵp Cyswilt Tribiwlysoedd Gymru

26. Cynhaliwyd cyfarfod gyntaf Grŵp Cyswilt Tribiwlysoedd Gymru ym mis Tachwedd 2009. Nod y Grŵp hwn, a sefydlwyd gan y Gwasanaeth Tribiwlysoedd, yw dwyn ynghyd ranndeiliaid tribiwlysoedd o awdurdodaethau datganoleddig a rhai nas datganolwyd i drafod materion o ddi-ddordeb cyffredin. Mae ei glych gorchwyl fel a ganlyn:

- Gweithredu fel grŵp cyswilt lefel uchel ar gyfer materion sy'n effeithio ar dribiwlysoedd datganoleddig a rhai nas datganolwyd yng Nghymru
- Cynniig canolbwynt ar gyfer casgliu a nodi materion sy'n codi Darparu fforum ar gyfer trafodaethau cychwynnol am faterion polisi perthnasol
- Buydo i meun i'r broses o ddatblygu polisi'r Gwasanaeth Tribiwlysoedd yng Nghymru.

27. Roedd y cyfarfod, wedi'i gadeirio gan Elisabeth Arfon-Jones, cynrychiolydd Lwch Lywydd y Tribiwlysoedd, yn gyflie gwych i gynrychiolydd hysbysu ei gilydd am y datblygiadau diweddaraf. Pumed argymhellad ein hadolygiad oedd "Dylai arweinydd barmwrol a gweinyddwyr pob tribiwlyso yng Nghymru gydweithio ar faterion o ddi-ddordeb cyffredin a thnag at weithredu argymhellion yr adroddiad a hwn." Yn sgil hyn, rydym wedi awgrymu y dylid ehangu cyfansoddiad a chlych gorchwyl y grŵp yn unol â hynny.

24. Er bod cryn dipyn o waith y Pwyllgor wedi canolbwyntio ar y tribwniwsedd datganoleddig, dros y ddwy flynedd ddiwethaf rydym wedi dod yn fwyfuy ymwybodol bod cwynion am wasanaethau cyhoeddus, yn hytrach na systemau ffurfiol ar gyfer sicrhau iawn megis tribwniwsedd, yn faes cyfiawnder gweinyddol pwysig. Fe'n calonogwyd pan benodwyd Peter Tynall, Ombudsmon Gwasanaethau Cyhoeddus Cymru ac aelod o Bwyllgor Cymru, yn gadeirydd gweithgor i ystyried y punc hwn. Tra fod Peter ei syniadau yn ein Cynhadledd ym mis Mehefin, Ers hynny mae'r gweithgor wedi datblygu fframwaith cwynion enghreifftiol sy'n seiliedig ar set o egwyddorion y gall ystod o wasanaethau cyhoeddus eu mabwysiadu i sicrhau dull symlach o ymdrin â chwynion.

YMDRIN Â CHWYNION CYFFREDIN

23. Mae'r Pwyllgor yn croesawu ymateb cyflym a chadarnhaol Llywodraeth Cynulliad Cymru i'r *Adolygiad*. Edrychwn ymlaen yn fawr at y diwygiadau arfaethedig dros y flwyddyn i ddod, ac rydym yn barod i ddarparu pob help a chymorth posibl i'r broses drosglwyddo.
22. Roedd y Pwyllgor yn falch o gael ymateb gan John Griffiths, Cwnsler Cyffredinol, ar ran y Prif Weinidog ar 8 Ebrill 2010. Roedd yr ymateb yn croesawu'r *Adolygiad* a nododd fod Llywodraeth Cynulliad am ymateb yn gadarnhaol i ganfyddiadau ac argymhellion yr adroddiad. Aeth y llythyr yn ei flaen i gyhoeddi'r canlynol:
- Roedd Pennaeth cymdeithas Gangen Cyfiawnder Gweinyddol wedi benodi ac mae'n rhan o Adran y Prif Weinidog a'r Cabinet
 - Roedd Llywodraeth Cynulliad Cymru yn bwrriadu rheoli'r broses o drosglwyddo Tribwniwsedd Cymru, a'r staff a'r cyllidebau cysylltiedig, i Adran y Prif Weinidog erbyn mis Ebrill 2011
 - Byddai Llywodraeth Cynulliad Cymru yn cyflwyno Cynulliad Gweithredu er mwyn rhoi'r *Adolygiad* ar waith i Gynulliad Cenedlaethol Cymru yn ystod yr hydref 2010.

- 16. Yn hanner cyntaf 2009-10 prif ystyriaeth y Pwyllgor oedd datblygu a dosbarthu holliduron manwl i gasglu data a gwybodaeth oddi wrth ddrifunlysedd Cymru. Roedd y wybodaeth a ddarparwyd yn ein galluogi i gael darlun llawn o'r trefniadau gwahanol sydd ar waith yn nhrifunlysedd gwahanol Cymru.
- 17. Gosodwyd yr *Adolygiad* gerbron Cynulliad Cenedlaethol Cymru ar 29 Ionawr 2010³. Hun oedd penllanw dros 12 mis o baratoï, ymchwil a llunio'r adroddiad. Hoffai'r Pwyllgor ddiolch yn arbennig i Carly Sheen, Ysgrifennydd y Pwyllgor ers ei sefydlu ym mis Mehefin 2008 tan fis Hydref 2009, am ei gwaith caled i ddod â'r *Adolygiad* i'w derfyn.
- 18. Yn ei ragair i'r *Adolygiad*, pwsieisia Syr Adrian Uebbs fod yr *Adolygiad* "yn codi materion sy'n achosi pryder mawr – ond hefyd gyflieoedd i wneud trifuwlysedd yn fwy costeffeithiol a gwella'r ffordd y gweinyddir gwasanaethau cyhoeddus sy'n gysylltiedig â hwy". Cydnabuwyd "nad yng Nghymru y creuwyd y problemau a godwn yn yr adroddiad hwn, ond mai yn ein dwylo ni yn unig y mae'r atebion".
- 19. Gwna'r *Adolygiad* 21 o argymhellion ar gyfer newid. Yn bwysicaf oll, mae'n argymhell creu canolbwynt ar gyfer polisi cyfiawnder gweinyddol yn Hdran y Ffrif Udeiniog, a fyddai hefyd yn darparu locws annibynnol ar gyfer gweinyddu trifuwlysedd yng Nghymru. Mae'n argymhell hefyd y dylai pob penodiad i drifuwlysedd fod yn agored, yn deg ac yn seiliedig ar deilyngdod, ac y dylai fod llawer mwy o gydgyssylltu a chydweithio rhwng arweinywyr barnwrol a gweinyddwyr trifuwlysedd Cymru.
- 20. Gwna'r *Adolygiad* gyfres o argymhellion manwl ar gyfer diwygio'r meysydd canlynol:
 - **Hgyrchedd** – yn cynnwys ymgysylltu â defnyddwyr, cael cyngor a chynrychiolaeth a gwell polisiâu a gweithdrefnau cwyno
 - **Effeithlonrwydd ac Effeithiolrwydd** – yn cynnwys darparu adnoddau, cymorth gweinyddol, hyfforddiant ac arfarnu ar gyfer aelodau trifuwlysedd
 - **Cydlyniaeth** – yn cynnwys gwell dull o sefydlu trifuwlysedd newydd, dull mwy cydlynol o ymdrin ag apelladau a gwaith i wella ansawdd y penderfyniadau gwreiddiol a wneir gan adrannau'r llywodraeth.
- 21. Ystyriodd Cabinet Llywodraeth Cynulliad Cymru yr Adroddiad ar yr *Adolygiad* ym mis Mawrth 2010, ac ymrwymodd i ddau gam gweithredu:
 - Cynnal dadl mewn Cyfarfod Llawn ar ddechrau tymor yr hydref
 - Pennu cumpas y camau gweithredu mewnol y mae angen eu arwain at gynllun gweithredu drafft i'w gymeradwyo gan y Gweiniogion.

11. Eglurodd y Meistr Ustus Lloyd Jones, Barmwr Llywyddol Cymru, fod y Llys Gweinnyddol wedi gallu eistedd yng Nghaerdydd o fis Ebrill 2009. Nod y broses ranbartholi hon oedd ei gwneud yn haws i ddinasyddion sy'n ceisio adolygiad barmwr o benderfyniadau'r llywodraeth gael cyfiawnder. Rhoddodd y Meistr Ustus Nicholas Warren y newyddion diweddaraf am strwythur unedig y tribwilysoedd, gan ganolbwyntio'n diweddaraf ar yr Uwch Dribwilysoedd. Nododd nad oedd tribwilysoedd bennaf ar yr Uwch Dribwilysoedd. Nododd nad oedd tribwilysoedd datganoledig Cymru wedi'u cynnwys yn y trefniant hwn, ar y cyfan, ond bod egwyddorion annibyniaeth ac arbenigedd barmwr yn datganoledig Cymru wedi'u cynnwys yn y trefniant hwn, ar y cyfan, yn amhrisiadwy o ran datblygu argymhellion allweddol yr *Adolygiad o Dribwilysoedd sy'n Gweithredu yng Nghymru*.
12. Cyflwynodd Syr Adrian Webb, ein Cadeirydd, yr *Adolygiad o Dribwilysoedd sy'n Gweithredu yng Nghymru*, gan nodi'r materion o ran tribwilysoedd datganoledig a oedd yn achosi'r pryder mwyaf i'r AJTC.
13. Yn ogystal darparodd y Gynhadledd sesynau i ganiatau i gynadledwyr gydwethio i ddadansoddi'r problemau a'r materion sy'n wnebu cyfiawnder gweinyddol yng Nghymru, a dechrau dod o hyd i atebion posibl i'r problemau hyn. Bu'r wybodaeth a gasglwyd yn y sesynau hyn yn amhrisiadwy o ran datblygu argymhellion allweddol yr *Adolygiad o Dribwilysoedd sy'n Gweithredu yng Nghymru*.
14. Ym mis Tachwedd 2008, dechreuwyd adolygiad o'r tribwilysoedd datganoledig yng Nghymru mewn ymateb i:
- Ein harsylwadau ar natur gymhleth a darniog tribwilysoedd yng Nghymru, gyda gwahaniaethau mawr yn y ffordd y mae'r gwahanol tribwilysoedd datganoledig yn gweithredu ac yn cael eu gweinyddu
 - Enghreifftiau o ddiwygiadau i dribwilysoedd datganoledig yn cael eu hystyried mewn ffordd *ad hoc* ac anghydygysylltiedig
 - Diffyg annibyniaeth ymddangosiadol tribwilysoedd yng Nghymru, gyda'r cyfrifoleb am dribwilysoedd a'r ffordd y'u gweinyddir yn nwylo'r hai y mae dyletswydd ar y tribwilysoedd i ystyried eu benderfyniadau
 - Trafodaethau gyda defnyddwyr.
15. Y Cylch Gorchwyl oedd adolygu tribwilysoedd yng Nghymru i benderfynu:
- a yw'r trefniadau gweinyddol ac ymarferol yn annibynnol ac yn ddiduedd
 - a ydynt yn hygyrch i ddefnyddwyr
 - a ydynt yn cael adnoddau priodol a'u trefnu'n briodol.
 - a oes gan dribwilysoedd strwythur cydlynol ar y cyfan.

- 6. Fel y nodwyd yn ein Hadroddiad Blynyddol ar gyfer 2008/09, nodweddir cyfiantnder gweinyddol yng Nghymru gan ei gymhlethdod. Er nad yw 'cyfiantnder' yn faes datganoleddig, mae llawer o'r meysydd sylweddol o lywodraeth a ddatganoliwyd wedi dod â systemau cyfiantnder gweinyddol yn eu sgîl. Golgydd hyn fod tribwilysoedd sy'n ymwneud ag iechyd ac addysg, er enghraifft, wedi'u datganoli i lywodraeth Cynulliad Cymru, tra bod tribwilysoedd sy'n ymwneud â'r rhan fwyaf o fudd-daliadau lles yn dal i gael eu gweithredu ar sail 'Cymru a Lloegr' neu 'y DU gyfan' gan y Gwasanaeth Tribwilysoedd.
- 7. Cafodd Deddf Tribwilysoedd, Llysoedd a Gorfodaeth 2007 effaith fawr ar dribwilysoedd nas datganoliwyd. Dygwyd tribwilysoedd a reoliwyd ar un adeg gan adrannau unigol y lywodraeth mewn ffyrdd gwahanol iawn ynghyd mewn strwythurau barnwrol a gweinyddol unedig sy'n annibynnol ar adrannau'r lywodraeth sy'n destun y penderfyniadau apel a wrandewir ganddynt.
- 8. Nid yw'r rhaglen ddiwygio hon wedi effeithio ar y rhan fwyaf o'r tribwilysoedd a ddatganoliwyd i Lywodraeth Cynulliad Cymru. Am y rheswm hwnnw, eleni mae Pwyllgor Cymru'r AJTC wedi rhoi'r flaenoriaeth i hybu argymhellion ar gyfer newid i sicrhau bod gan ddinasyddion Cymru fynediad i system cyfiantnder gweinyddol fodern, annibynnol a theg mewn awdurdodaethau datganoleddig.

CYNHADLEDD PUYLLGOR CYMRU'R CYNGOR CYFIANDDER GWEINYDDOL A THIBWILYSOEDD

- 9. Cynhaliwyd y gynhadledd "Cyfiantnder Gweinyddol yng Nghymru: Canolbwyntio ar y Dinesydd" yng Nghaerdydd ar 18 Mehefin 2009. Roedd yn gyfle amserol i ddwyn rhanddeiliaid ynghyd i drafod cyd-destun strategol cyfiantnder gweinyddol datganoleddig yng Nghymru a'r materion penodol a wnebir ganddo. Traddododd Andrew Davies, y Gweinidog dros Gyllid a Chyflenwi Gwasanaethau Cyhoeddus ar y pryd, y bfr arait. Eglurodd bwysigrwydd 'canolbwyntio ar ddinasyddion', ac eglurodd fod hynny'n golwg, ymhlith pethau eraill, yr angen i addasu gwasanaethau cyhoeddus i ddiwallu anghenion dinasyddion, ac nid i'r gwrthwyneb. Pwysleisiodd nad dim ond pwysigrwydd democrataidd sydd i'r dull hwn, ond y gallai hefyd arwain at wasanaethau mwy effeithlon ac ymatebol drwy rymuso staff rheng flaen a dysgu o'r enghreifftiau gorau o arloesedd mewn sefydliadau eraill. Defnyddiodd y Fonesig Gillian Morgan, Ysgrifennydd Parhaol Lywodraeth Cynulliad Cymru, profiad claf yn y GIG fel enghraifft i ddangos pwysigrwydd deall anghenion unigolion ac ymateb i'r anghenion hynny, gan osgoi unrhyw syniad o 'smp-brosesu' pobl.

- 10. Pwysleisiodd Peter Tynall, Ombudsmon Gwasanaethau Cyhoeddus Cymru ac aelod *ex officio* o Bwyllgor Cymru, gymhlethdod maes cyfiantnder gweinyddol o safbwynt ddinasyddion. Nododd fod cyfnoogaeth greff o du'r llywodraeth i ddatblygu gweithdrefn gwyno sylmloch sy'n cynnwys holl wasanaethau cyhoeddus Cymru, yn ogystal â threfniadau cyfeirio llawer gwell ar gyfer ddinasyddion sy'n chwilio am help a chynngor.

Amcan 1: Adolygu datblygiad cyfiawnder gweinyddol a dylanwadu arno

EIN RÔL

Fe'n penodwyd gan Weinidogion Cymru¹ i ymgymryd â'r swyddogaethau statudol a ganlyn:

- adolygu'r system cyfiawnder gweinyddol yng Nghymru
 - ystyried ffyrdd o wneud y system yn hygyrch, yn deg ac yn effeithlon
 - cyngbori Gweinidogion Cymru ac eraill ar ddatblygiad y system yng Nghymru
 - cyfeirio cynigion ar gyfer newidiadau i'r system i Weinidogion Cymru ac eraill
 - gwneud cynigion ar gyfer ymchwil i'r system yng Nghymru.²
- Gall Gweinidogion Cymru neu'r Arglwydd Ganghellor ofyn i ni gyflwyno adroddiad ar faterion penodol, neu gallwn benderfynu cyflwyno adroddiadau ein hunain.

EIN BLAENORIAETHAU

Er mwyn cyflawni Amcan 1, ein prif flaenoriaethau ar gyfer 2009/10 oedd:

- Methrin deallturiath o gyfiawnder gweinyddol yng Nghymru
- Cynnal cynhadledd cyfiawnder gweinyddol yng Nghymru
- Cyflwyno Adolygiad o Dribunlysoedd sy'n Gweithredu yng Nghymru i Weinidogion Cymru
- Parhau i gymryd rhan mewn cyfarfoddydd strategol sy'n effeithio ar gyfiawnder gweinyddol yng Nghymru.

¹ Deddf Tribunlysoedd, Llysoedd a Gorfoadaeth 2007, Awdalen 7, para 7.

² Deddf Tribunlysoedd, Llysoedd a Gorfoadaeth 2007, Awdalen 7, para 13.



5. Ers ein Hadroddiad diweddaraf, rydym wedi gwneud y canlynol:
- Meithrin dealltwriaeth bellach o gyfiantwnder gweinyddol, drwy gyfarfod â grwpiau defnyddwyr a chynrychiolwyr, llunwyr polisiau ac aelodau'r farnwriaeth
 - Parhau i adolygu cyfiantwnder gweinyddol yng Nghymru drwy ymweld â thribwntysoedd a chyfarfod ag ombwdsmyrn a'r sawl sy'n ymdrin â chwynion
 - Cynig cyngor ar y system drwy ymateb i ymgynghoriadau Cynnal Cynhadledd gyntaf Pwyllgor Cymru, gan ddwyn ynghyd gyntwchwlwyr o bob rhan o'r system cyfiantwnder gweinyddol yng Nghymru
 - Cyhoeddi Adolygiad o Dribwntysoedd sy'n Gwethredu yng Nghymru (yr Adolygiad), a osodwyd gerbron Cynulliad Cenedlaethol Cymru ar 29 Ionawr 2010
 - Cael cadarnhad bod Cabinet Cymru wedi derbyn ein canfyddiadau mewn egwyddor, ac y cynhellir dadl mewn Cyfarfod Llawn am yr Adolygiad yn ddiweddarach yn 2010.

Cyflwyniad a Chrynodeb

1. Hun yw ail Adroddiad Blyneddol Pwyllgor Cymru'r Cyngor Cyfiawnder Gweinyddol a Thribiwnlysoedd (AJTC). Sefydlwyd yr AJTC o dan Ddeddf Tribiwnlysoedd, Llysoedd a Gortfodaeth 2007 (y Ddeddf), Daeth Pwyllgor Cymru i fodolaeth ar 1 Mehefin 2008. Roedd ei Adroddiad Blyneddol cyntaf yn ymdrin â'r cyfnod hyd at fis Mawrth 2009. Mae a wneio'r adroddiad hun â'r cyfnod rhwng 1 Ebrill 2009 ac 31 Mawrth 2010.
2. Mae gan Bwyllgor Cymru ei hunaniaeth ei hun ac mae'n arwain y gwaith o oruchwylio cyfiawnder gweinyddol yng Nghymru mewn awdurdodaethau datganoledig ac awdurdodaethau nas datganoledig. Mae aelodau hefyd yn chwarae rhan bwysig yng ngwaith yr AJTC yn ei gyfarwng. Er enghraifft, mae ein Cadeirydd yn aelod o Bwyllgor Cymru a'r AJTC, ac mae aelodau'n chwarae rhan weithredol yng ngwaith prosiect yr AJTC ledled y DU. Nodir swyddogaethau allweddol yr AJTC a Phwyllgor Cymru yn y Ddeddf.
3. Llymwyd gwaith y Pwyllgor yn 2009-10 gan ei dri amcan strategol, sef:
 - a. Adolygu datblygiad cyfiawnder gweinyddol a thribiwnlysoedd yng Nghymru a dylanwadu arno
 - b. Adolygu tribiwnlysoedd datganoledig a'r rhai nas datganoledig, a gwaith y Gwasanaeth Tribiwnlysoedd fel y mae'n effeithio ar Gymru
 - c. Ymateb yn awdurdodol i faterion sy'n codi a chynigion sy'n effeithio ar gyfiawnder gweinyddol, tribiwnlysoedd ac ymchwilidau yng Nghymru neu sy'n ymwneud â hwy.
4. Prit flaenoriaeth y Pwyllgor ar gyfer 2009-10 fu canolbwyntio ar:
 - Yr angen am bolisi cydlynol ar gyfer cyfiawnder gweinyddol
 - Yr angen i wahanu pwerau sy'n ymwneud â pholisi, arlannu a gweinyddu tribiwnlysoedd
 - Yr angen i wella'r penderfyniadau gwreiddiol a wneir gan y llywodraeth a chyfrff cyhoeddus eraill.

Cyflwyniad a Chrnodeb

Amcan 1: Adolygu datblygiad cyfiawnder gweinyddol a dylanwadu arno

- Ein Rôl a'n Blaenoriaethau3
- Cynhadledd Pwyllgor Cymru'r Cyngor Cyfiawnder Gweinyddol a Thribwilysoedd4
- Adroddiad yr Adolygiad o Dribwilysoedd sy'n Gweithredu yng Nghymru5
- Ymdrin â Chwynion Cyffredin7
- Cynrychiolaeth ar Grwpiau Strategol8

Amcan 2: Adolygu gwaith y tribwilysoedd a'r ymchwiliadau sy'n gweithredu yng Nghymru

- Ein Rôl a'n Blaenoriaethau9
- Ein Gweithgareddau - Arslwi ar Urandawiadau10
- Grwpiau Defnyddwyr Tribwilysoedd13

Amcan 3: Ymateb yn awdurdodol i faterion sy'n codi a chynigion

- Ein Rôl a'n Blaenoriaethau14
- Ymatebion i Ymgynghoradau15

Atodiadau

- A: Helodaeth o Bwyllgor Cymru'r Cyngor Cyfiawnder Gweinyddol a Thribwilysoedd20
- B: Costau Pwyllgor Cymru'r Cyngor Cyfiawnder Gweinyddol a Thribwilysoedd21
- C: Cyfarfoddydd ac Ymweliadau â Thribwilysoedd22

Fel yr addawyd yn adroddiad blynyddol y llynedd, eleni cwblhaodd Pwyllgor Cymru'r Cyngor Cyfiawnder Gweinyddol a Thribuniolysedd (AJTC) ein Hadolygiad o'r Tribuniolysedd sy'n Gweithredu yng Nghymru. Dros y 12 mis, gwnaethom ystyried y clytwaith o dribiliolysedd datganoledig yng Nghymru, gan ofyn cwestiynau ynglyn â'u trefniadaeth, eu gweinyddiaeth a'u barnwriaeth. Yn ogystal, edrychwyd mewn ffordd fwy strategol ar y system a lluniwyd 21 o argymhellion ar gyfer diwygio.

Roedd yn peri pryder bod ein barn gyochwynol ar y system, a oedd wedi'i nodwedd gan gymhlethdod, diffyg cydlyniaeth a diffyg annibyniaeth yn ôl pob golwg, wedi'i chadarnhau i raddau helaeth. Ein prif bryder oedd y diffyg gwahannu pwerau a oedd yn amlwg ym mhob rhan o'r system: adranau ac awdurdodau sy'n rheoli'r prosesau a ddefnyddir i gyflwyno apeliadau yn eu herbyn. Fan fydd unigolion yn ceisio iawn, mae'n hanfodol y gwelir bod y prosesau yn wirioneddol annibynnol. Er mwyn unioni'r diffyg gwahannu pwerau hwn, ein prif argymhelliaid oedd sefydlu Cangen Cyfiawnder Gweinyddol o fewn Llywodraeth Cynulliad Cymru. Ein gobath oedd y byddai cangen o'r fath yn gweithredu fel canolbwynt a fyddai'n ystyried polisi, arfer, canllawiau a gweinyddiaeth gyffredinol. Byddai creu cangen o'r fath yn caniatáu ar gyfer gwahannu pwerau tra'n sicrhau hefyd fod cyfiawnder gweinyddol yng Nghymru yn datblygu mewn modd cydlynol a chydgylltiedig.

Gosodwyd yr adroddiad ar ein Hadolygiad gerbron Cynulliad Cenedlaethol Cymru ym mis Ionawr 2010. Roeddem yn falch o'r croeso a roddwyd i'r adroddiad, a'r cyfilymder yr aeth Llywodraeth Cynulliad Cymru ati i greu swydd Penaeith y Cangen Cyfiawnder Gweinyddol, yn Adran y Prif Weinidog a'r Cabinet. Bydd y Cabinet yn ystyried Cynullion Gweithredu drafft ar gyfer gweithredu'r argymhellion a wnaed yn ein Hadroddiad. Edrychwun ymlaen at y ddadl mewn Cyfarfod Llaun am y Cynllun Gweithredu, a byddwn yn gweithio gyda Llywodraeth Cynulliad Cymru i gynniig cynngor a chymorth o ran y broses ddiwygio. Ni ddylid anghofio mai dim ond y cam cyntaf tuag at newid a modernyddio oedd yr Hadolygiad, a gobethiwn yr eir i'r afael â gweddill y broses hon mewn ffordd ddiwyd a chyson.

Ar adeg o gymaint o newid, mae wedi dod i'r amlwg bod amheuaeth ynglyn â dyfodol yr AJTC. Ni ddylai diddymu'r AJTC ar adeg mor dyngedfennol yn y broses o ddatblygu cyfiawnder gweinyddol yng Nghymru olygu bod yr angen i ddiwygio'n cael ei roi o'r neillitu. Mae ein swyddogaethau o barhau i adolygu'r system ac ystyried ffyrdd o'i gwneud yn fwy hygyrch, yn decach ac yn fwy effeithlon yn hanfodol er mwyn sicrhau bod dinasyddion yn cael triniaeth deg wrth iddynt ymwneud â'r wladwriaeth. Dros yr ychydig flynyddoedd diwethaf rydym wedi meithrin gwybodaeth gynhwsafar o'r system, a gobethiwn yn fawr y defnyddir y wybodaeth hon mewn trafodaethau ynglyn â dyfodol y sefydliad neu i helpu i lunio olynedd-sefydliad.

Yr Athro Syr Adrian Webb

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Gallwch ailddedfnyddio'r wybodaeth hon (ac eithrio'r logos) am ddim mewn unrhyw fformat neu

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Y Cyngor Cyfiawnder Gweinyddol a Thribiwilysoedd Pwyllgor Cymreig

ADRDDIAD BLYNYDDOL 2009/2010

Cyflwynir yr Adroddiad hwn i Weinidogion Cymru

Fei gosodir gerbron Cynulliad Cenedlaethol Cymru gan Weinidogion Cymru
yn unol â pharagraff 21 o Atdolien 7 i Ddeddf Tribiwilysoedd,
Llysoedd a Gorfodaeth 2007

Mae'r Cyngor Cyfiawnder Gweinyddol a Thribiwilysoedd a'i Bwyllgor yn yr Alban yn
cyhoeddi eu hadroddiadau blynyddol eu hunain

Tachwedd 2010