

## **Administrative Justice in Wales**

---

St David's Hotel, Cardiff  
Thursday 21 June 2007

# Speakers

---

## **Welcome and Introduction**

Rt. Hon. Lord Newton of Braintree  
Chairman, Council on Tribunals

## **Keynote Speech**

Rhodri Morgan AM  
Assembly First Minister

## **Legal Wales: Administrative Justice in Context**

Rt. Hon. Lord Justice Thomas

## **Tribunal Reform Programme: the Issues for Wales**

His Honour Judge Hickinbottom  
Chief Social Security, Child Support and Pensions Appeal Commissioner &  
Designated Civil Judge for Wales

## **The Tribunals Service in Wales**

Guy Tompkins  
Regional Director – South, Tribunals Service

## **Justice in Wales and the Welsh Language: Recent Developments**

Her Honour Judge Eleri Rees  
Liaison Judge for the Welsh Language

## **The Administrative Justice Scene in Scotland**

Alistair MacLeary  
Chairman, Scottish Committee of the Council on Tribunals

## **The Administrative Justice Scene in Northern Ireland**

Siobhan Broderick  
Northern Ireland Court Service

## **The Administrative Justice and Tribunals Council in Wales**

Rt. Hon. the Lord Newton of Braintree

## **Keynote Speech**

Rhodri Morgan AM – Assembly First Minister

---

- I am delighted to be here today speaking at your second Conference on Administrative Justice in Wales.
- I'm not going to talk to you at length about Tribunals. There are very many people here today who are much better equipped to do that.
- Instead, I want to say something about the building of a new set of distinctive institutions for Wales, which has come about as a result of devolution.
- Wales has come a long way in the last 10 years and these institutions are developing all the time. And as I will mention in a moment, changes about to be introduced by the Tribunals Courts and Enforcement Bill will add another important element to this emerging institutional structure.
- But let me mention first that in 2001 the first Children's Commissioner for Wales was appointed. We were the first in the UK to establish such an office. Peter Clarke, the first Commissioner, made an enormous impact, and his untimely death has left us all the poorer. Nevertheless we must move on, and a new appointment to that office will need to be made later this year.
- Since we last met at your Conference two years ago, the Office of the Public Services Ombudsman for Wales has come into being.
- This new institution combines the previous offices of the Local Government Ombudsman for Wales, Health Service Ombudsman for Wales, Welsh Administration Ombudsman and Social Housing Ombudsman for Wales in one role. I congratulate Adam Peat on the success he has made of this office, which is now very firmly established.
- We have also pledged to set up a Commissioner to speak up for older people in Wales, along the lines of the Children's Commissioner.
- This required primary legislation which was passed by the UK Parliament with the Commissioner for Older People (Wales) Act 2006 receiving Royal Assent in July last year.
- Regulations which outlined the detailed role and powers of the Commissioner came into effect in February 2007.
- The final stage will be to appoint a Commissioner, and it is expected that a Commissioner will be in place by the Autumn.
- The Tribunals, Courts and Enforcement Bill, currently before Parliament, needs to be seen in the light of this process of institution-building for the new Wales. The Bill, as you know, will among other things replace the Council on Tribunals with the Administrative Justice and Tribunals Council, which has been given a broader remit of keeping the administrative justice system as a whole under review.
- The Bill includes provision for increased representation from Wales on the successor body to the Council on Tribunals and for the first time provides for a separate Welsh Committee of the Administrative Justice and Tribunals Council.

- Planning work is underway relating to the implementation of the Bill. We are working with the Ministry of Justice to establish the Administrative Justice and Tribunals Council by the end of the year and the Welsh Committee by early 2008.
- The Welsh Committee will be another new body in Wales. It will keep under review the working of tribunals and inquiries operating in Wales, consider ways to ensure they make the system accessible, fair and efficient and advise on development of the system.
- At the core of the Committee's membership will be the Parliamentary Commissioner for Administration, the Public Services Ombudsman for Wales and other members who will be appointed under the public appointments process. Applications for these posts will be invited later this year.
- Let me say too that devolution has enabled us to start the process of developing distinctive policies.
- We are now moving into a particularly exciting and challenging phase with the implementation of the powers of the Government of Wales Act 2006.
- The first proposed Legislative Competence Order (LCO) to be taken forward under the new Government of Wales Act was tabled by the Welsh Assembly Government earlier this month.
- This will provide the first opportunity for the Assembly to consider seeking powers under the new Order in Council process introduced by the 2006 Government of Wales Act.
- This first LCO will confer additional legislative powers for additional learning needs and enable the Assembly Government to bring forward Assembly Measures on Special Educational Needs (SEN) provision.
- It will need approval by both the Assembly and both House of Parliament before it can be made and my officials have already opened discussions with their counterparts in Whitehall to both explain what we have in mind as well as paving the way for what we hope will be a smooth approval process.
- The LCO will allow us to build on the work of the former Education, Lifelong Learning and Skills committee's review of Special Educational Needs (SEN) and take forward our objectives in this important area as set out in the Learning Country - Vision into Action.
- Amongst the various issues that it will allow us to address are, for instance, how we can strengthen the role of local education authorities and schools in supporting children and young people with SEN as well as allowing children with sufficient understanding to exercise a right to appeal themselves to the SEN Tribunal for Wales.
- This latter proposal is something that the Children's Commissioner for Wales strongly urged the Welsh Assembly Government to consider. He saw this right of appeal as being particularly consistent with the United Nations Convention of the Rights of the Child that underpins all of Assembly Government policy for children and young people.

- These are areas that will need public consideration and widespread consultation with key stakeholders such as the Council on Tribunals and its successor body and we will be looking to specifically engage with you in due course.
- Since all tribunals exist essentially to provide a form of redress in disputes, you will also be interested to hear that fair and accessible redress is an area which the Welsh Assembly Government has placed at the heart of its plans for public services in Wales. Indeed, it is one of the core customer services standards we have developed under our *Making the Connections* agenda
- Last week I announced our intention to put a Measure before the Assembly before the summer recess dealing with redress in the national health service in Wales. The Measure will open the way to simplifying the ways in which patients can seek redress from the national health service when things go wrong, thereby making the system more coherent and more accessible.
- So we are building distinctive policies and institutions here in Wales for the people of Wales, and a conference on Administrative Justice here in Cardiff is therefore most timely and appropriate.
- I am pleased to have had the opportunity to speak to you here today and hope that you have an interesting and informative Conference.

## **Legal Wales: Administrative Justice in Context**

Rt. Hon. Lord Justice Thomas

---

The title I have been given is an apt one, as it enables me to examine, in the context of Wales, the inter-relationship between the tribunals and the courts within the judicial branch, the state and the relationship between the judicial branch of the state, that is to say the tribunals and the courts, and the legislative and executive branches of the state.

It is important to begin by stressing the singular importance of appreciating, when considering the role of tribunals in Wales, that the courts and the tribunals are integral parts of the single branch of the state responsible for the delivery of justice and that the differences between the way each part delivers justice is, as I shall explain, minuscule.

There has always been, and always will be, times when attempts are made to simplify, speed up and make cheaper the way justice is delivered. Perhaps the most well known example of such attempts were the reforms necessitated by the procedures of the Court of Chancery in the 19<sup>th</sup> Century portrayed so vividly by Dickens in *Jarndyce v Jarndyce*. Another example is the constant struggle between commercial and mercantile courts and arbitrators for the work of the business community. Yet another is the current judicial-led reform to speed up and simplify the process of the Magistrates' Courts. Such reforms are necessary because any part of the legal system is subject to risks including a tendency to ossify, disproportionate charging by lawyers, technicality displacing the justice of a case and simplicity, speed and economy to litigants being ignored. New brooms are needed from time to time.

The historical origins of tribunals lies in the ossification of the court system at two points in the 19<sup>th</sup> century; I traced the detail of the development of tribunals to the present century in a lecture I gave to the University of the West of England and I returned to this topic when I last spoke in Cardiff on the subject of tribunals at a conference of the Chairman of Employment Tribunals. I will not revisit that ground.

### **The virtually identical nature of the way justice is delivered**

However, the conclusion of such an examination, in my view, demonstrates that there is now in fact virtually no difference between the way justice is administered in the courts and tribunals – the latter are simply the historic product of discontent with a court system that has since been the subject of evolving reform. If, for example, one examines the six characteristics identified by the Earl of Donoughmore's Commission in 1932 which were said to be the hallmarks or differentiating factors between the courts and the tribunals system, it is readily apparent that the differences are minuscule.

#### *(i) Cheapness:*

There are two elements to the cost of litigation – the cost of lawyers and the cost of the judiciary and the services that support them. If lawyers are employed, the cost of employing a lawyer is no different. There is no difference, fortunately, these days between what tribunal members are paid and what the judiciary are paid. The cost of the services needed to support them is the same. The only difference is that the state makes the civil litigant pay for the courts, whereas tribunals are subsidised.

(ii) *Accessibility:*

There is no difference as to accessibility – but this is a topic to which I will return.

(iii) *Technicality:*

One only has to spend a scintilla of time examining immigration law, social security legislation or employment law to see that there is no difference between the technicality of the law administered by tribunals and that administered by the courts. If anything, the technicality of the law administered by tribunals is becoming much worse.

(iv) *Expedition:*

Again, there is no difference in speed between tribunals and courts.

(v) *Expertise:*

Courts and tribunals both have specialist judges and the concept of specialisation has been recently developed much more in the courts. There is, however, one difference and that relates to mixed tribunals. In that respect, tribunals have specialist lay members which the courts do not have.

(vi) *Uniformity of decision-making:*

It is clear that each has a system for ensuring uniformity of decision-making by a system of appeals and precedent.

This very brief summary of what I have developed elsewhere points, in my view, to the indisputable conclusion that there is, perhaps unsurprisingly, no essential difference between the way in which justice is administered on a day-to-day basis between the courts and the tribunals, save as regards those tribunals where the decision-makers are a lawyer chairman and two specialist lay members – a very common form of arbitral tribunal and which the courts of other countries have developed (and which we might have developed in the nineteenth century for commercial cases).

I have stressed this as the first point I wish to make, because in Wales, a small and re-emerging nation, it is essential to have the huge synergies and similarities at the forefront of any discussion about the provision of justice to its people, for reasons I shall explain.

### **The similarities in organisation and administration of the courts and tribunals**

I wish next to turn to the essential similarities in the way the courts and tribunal are themselves organised and administered.

- (a) Under the Constitutional Reform Act, the appointment and discipline systems are identical. The Judicial Appointments Commission makes all appointments to the judiciary and to the tribunals and ultimately the decisions on discipline are made by the Lord Chancellor and Secretary of State for Justice and the Lord Chief Justice.

- (b) The codes of conduct and the ethical principles summarised in the Bangalore Principles are identical.
- (c) The absolute independence of the judiciary and tribunals is recognised as essential to the rule of law; the requirements for independence are again identical.
- (d) The position of the judiciary as one of the three branches of the state is now accepted; as it is sometimes put, “Montesquieu arrived in these Isles only recently”. No-one has needed to address the philosophical question of where tribunals sit in this, as it is obvious they fit into the judicial branch of the state and that branch is ultimately a united branch with the highest court, the House of Lords, as its apex.
- (e) In the internal governance of the judicial branch of the state, the tribunals along with the judiciary are part of the Judges’ Council.

### **The effect of the Tribunals Bill**

However, on the passing of the Tribunals Bill, there will be differences in aspects which no doubt His Honour Judge Hickinbottom will wish to develop, as it has been decided to create a separate administrative structure for tribunals.

### **The need for joint administration and joint working**

It is clear, however, that because both are but part of the same branch of the state and have an identical function and approach their functions in a virtually identical way, they must work very closely together. There are two aspects on which I wish to concentrate, as they are of particular importance to the people of Wales.

- (i) The provision of the administrative infrastructure
- (ii) The relationship with the two other branches of the state.

I do so because, as matters stand at present in the development of devolution and the reform of the administration of justice in Wales, these are the two key areas where the position of Wales needs to be examined with great care if the people of Wales are to be properly served by the judicial branch of the state.

### **The administrative infrastructure**

I do not intend to say anything about the current discussions between the judiciary and the executive in London as to the way in which finance is to be provided and the governance of the administration of the courts and tribunals handled. What I wish to do is to look at the way in which the administration should operate in Wales by reference to three concrete examples:

- (a) The provision of court/hearing rooms
- (b) The provision of offices in Wales.
- (c) The Welsh language.
- (a) *The provision of courts/ hearing rooms*

There is no doubt, as the First Minister has pointed out in his remarks to us this morning, that the provision of court/hearing rooms across Wales is essential, if the people of Wales are to be accorded their fundamental right of access to justice in any meaningful sense. Whatever may be the position in a large and densely populated nation such as England, with a number of very large cities, Wales is different. Cardiff, and possibly Swansea, are the only conurbations of sufficient size where anyone could contemplate different buildings for courts and tribunals; most of the nation is rural. There is no hope whatsoever of serving any part of Wales outside Cardiff and providing, at economic cost, access to local justice if there is a separate approach to providing facilities for courts and tribunals.

Thus in Wales it seems to me essential that there must be a joint approach to the estate and I am glad that in many cases this is being done. When I was Presiding Judge I advocated a joint approach to the provision of buildings and a joint allocation system for their use so that effectively the entire estate could be managed as one. It is the only way forward in Wales and in this respect Wales is quite different to England. Examples of where this approach has so far worked has been at Haverfordwest and Caernarfon. It is essential that this approach is adopted by HMCS and the Tribunal Service and that there is a joint estate in Wales planned and managed as one. A failure to do so would be seen as serving ill the interests of the people of Wales and impeding their rights of access to justice locally at an economic cost.

*(b) Provision of administrative offices*

Not only is it essential that in Wales there is a joint approach to the estate, but in my view there must be a joint approach to the provision of administrative offices. Shortly after the Government of Wales Act 1998 was passed, Lord Irvine of Lairg, the then Lord Chancellor, held a conference for United Kingdom judges in London. At that conference he announced the decision to establish separate provision for the hearing of judicial review cases in Cardiff. That was a political decision for which we in Wales ought to be very grateful to him, because it was not a decision that those who then looked after the administration of the Administrative Court would have favoured; indeed for a long time some did their very best to frustrate what Lord Irvine wanted.

It is easy to understand why some administrators, particularly those in London, adopt this attitude. It is infinitely cheaper and more efficient to run everything from London and let everyone come to London. You save the cost of offices and without doubt, as Dr Beeching once proved, the larger the court centre the more efficiently judges can be deployed. An approach therefore from the point of view of the administrator in London of concentrating everything in London has much to commend it from the viewpoint of administrative efficiency.

It is therefore not surprising that some eight years after the decision made by Lord Irvine the struggle to establish a full office for the Administrative Court in Wales continues. The judiciary recognise the absolute need for it so cases can be handled locally, but it has a cost which, at the time of stringent Government controls over expenditure, is an expenditure that those who administer the system in London are reluctant to make. As regards tribunals, it is clear that there is a need for those tribunals which are not devolved to have an administrative base in Wales. The question I wish to pose to you is the same as regards buildings. Is it sensible in Wales to have two separate administrative systems or can something be done to bring them together and save costs? For if this is not done I fear that the cost of having separate offices in Wales will be used as an excuse to deny the proper provision of justice in Wales to the manifest detriment of the people of Wales.

It is important to note that with the transfer of Cheshire to the North West Region, the courts of Wales are now for the first time since 1830 (and possibly very much earlier) administered through one office which covers only Wales; there is an excellent description by Keith Bush in the latest issue of the Institute of Welsh Affairs' *Agenda*. Thus there is now for the court service a distinct organisation for Wales. Although it is obviously impossible to have the same for the tribunal system, I would urge you strongly to consider how the two organisations can be brought together within Wales to ensure that the people of Wales have proper access to justice.

(c) *The Welsh Language*

I will steal none of HH Judge Eleri Rees' thunder, even if I was capable of it, in turning to the issue of the Welsh language. When the Lord Chancellor's Standing Committee on the Welsh Language was born during Lord Irvine's Lord Chancellorship, it was born as the manifestation of the unity of the courts and tribunals. It has achieved much. It is, in my view, a living embodiment of the way in which Wales should develop a joint approach and joint work. It saves cost and brings people together for the benefit of all within our small nation.

**Relationship of the judiciary, legislature and executive**

I have taken these three illustrations of the necessity for joint organisation and working before turning to the second of the topics about which I need to speak – the relationship of the judicial branch of the state with the executive and legislative branches. It is important to recall that within Wales there are now three sets of executives and legislatures with which it is necessary to deal:

- (a) The Assembly and the Assembly Government in Cardiff
- (b) Parliament and the Executive Government in Westminster and Whitehall respectively and
- (c) The European Parliament and the European Commission in Brussels.

Although explaining the many reasons why it is essential for the judicial branch of the state to work with the two other branches would require a lecture in itself, it is self evident that they must work together to produce good governance of the nation as a whole. The most obvious illustration of the need to work together is to ensure proper financial provision for the judicial system. Another example of why they must work together is to ensure that law reform is properly and sensibly carried out and the availability of the expertise of the judiciary and tribunal members is made available to Parliament and to the executive. There is also the question of the accountability for the way in which the system operates. In my view it is very important that tribunals and the judiciary work together in their relationships with the other two branches of the state.

As regards to the position in Cardiff, there is a strong and growing relationship on a ministerial, legislative and official level. The first Counsel General, Winston Roddick, played a leading role in establishing this and I am confident with the appointment of the first statutory Counsel General that we will have and continue to strengthen the relationship with the executive and legislative branches of the state in Cardiff. At present, because of the way in which the judicial system falls within the constitutional division of powers in the United Kingdom, by far the most important relationship with the legislature and with the executive is the relationship with Westminster and

Whitehall. It is, for the reasons I have given, extremely important that there is a constructive relationship with Westminster and Whitehall; it is particularly important to Wales as it is so easy to forget the separate position of Wales in the complexity of government to which the system of devolution has given rise. As to the institutions in Brussels, their influence is growing all the time, particularly as regards legal issues; much more may be known next week after the next Heads of Government Conference. However already there are links between the institutions in Brussels and the judiciary and it is in this respect that it is important that the tribunals and the judiciary work together as in Europe the distinction is drawn in different places between courts and tribunals.

So as for the present, my short message to you is that we must all work together in Wales if, given the demography of this nation, the people of Wales are to be properly served with access to the courts and to the tribunals.

### **What of the future?**

The First Minister and his remarks have given a foretaste of what we may expect. Clearly what happens will be the result of political decision on which I cannot and will not comment. However a major influence on the development of the tribunals and courts in Wales will be the way in which the Assembly will make use of its new legislative powers with the assent of Parliament in Westminster, the spheres of governance that will be devolved to the Assembly and any development in the law making powers of the Assembly. It may well be that these will have considerable implications for the future but, whatever happens, I am sure the tribunals and judiciary must work together. If the essential unity of the system of justice that is shared between England and Wales is to be maintained, the separate identity of Wales must be recognised in the way reforms and changes are made. I have identified two respects where a clear and different approach is needed in Wales to that in England; I shall watch with interest to see that this is followed through. It must be a cardinal principle that Wales should be treated no differently to Scotland or Northern Ireland and that applies in particular to the way in which tribunals operate.

## **The tribunal reform programme: issues for Wales**

His Honour Judge Hickinbottom

---

The tribunal reform programme is built on two main foundation stones.

First, there is the principle that responsibility for tribunals and their administration should not lie with those whose policy or decisions it is the tribunal's duty to consider. Tribunals are part of the justice system. In substance and appearance they should therefore be independent from the executive government whose decisions, usually, are the subject of challenge before them. Otherwise, as Sir Andrew Leggatt put it in his report, *Tribunals for Users*, for citizens who wish to challenge the Government, "Every appeal is an away game".

This principle of separation of powers is of considerable constitutional importance - but, unlike perhaps all such principles, it is also of direct vital concern in the minds of the public. In the tribunal world, we are all aware that appellants against Government decisions are anxious that their appeal is heard by someone independent of the system in respect of which they are disgruntled; which - sometimes rightly, often wrongly; but either way usually fervently - they consider has simply not listened to what they have to say. This separation of powers is essential for public confidence in the administrative decision making process as a whole.

In pursuit of this principle, Lord Irvine when Lord Chancellor obtained the approval of the sponsoring Government Departments of all UK and GB tribunals for the transfer of those tribunals to the Lord Chancellor's Department, now of course the Ministry of Justice. In relation to this principle, those approvals were invaluable. It is to be hoped that future Secretaries of State in the new ministry - whoever they may be - are properly sensitive to and protective of the principle of separation of powers.

The second foundation - logically following the first - is that the administration of tribunals, which was frankly ramshackle, should be made more efficient. The problems of tribunals in this area were well-recognised in the Leggatt Report, which refused to use the term "tribunal system" on the basis that tribunals so lacked any form of organisation it would be a misnomer. The inefficiencies of the pre-reform tribunals were legion, particularly because of the lack of coordination which resulted from tribunals being administered by sponsoring departments often without any regard to the work of other departments or tribunals outwith their control. So, with regard to estate, there were multiple tribunal hearing rooms in many towns and cities, with low usage, whilst other tribunals had hearings in small hotel rooms and worse. Tribunal judges were underemployed, despite there being immense amounts of work that they could have done in other tribunals. Competitions for appointments were duplous, with many candidates having to apply in many competitions for similar posts. Money was inefficiently used - although, in some ways, that was hidden by the tribunal's expenses being only a tiny part of the overall budget for the sponsoring department. In respect of onward appeals, some were to a second tier tribunal, some to the High Court/Court of Session, some were to a second appeal court. Other challenges had to be by way of judicial review, rather than full appeal. The route of appeal - often difficult to discern - was usually the result of historical accident.

The problems of inefficiency have been tackled in the reform programme by the evolution of a new coordinated system under the Tribunals Service, in which tribunals

are being rationalised. Under the Bill, a system of first-tier chambers will be set up, with a more or less common appeal to a second tier tribunal - and thence to the court system at Court of Appeal/Inner House level. There is to be rationalisation of estate, almost certainly at first-tier on a regional basis: and the ability simply to cross-assign members of the tribunal judiciary, including non-legal members.

These are the pillars of the reformed system - the principles that those involved in the reform programme have in mind when going forward. In relation to these principles, what particular issues are there for Wales?

It is generally taken that, unlike in Scotland and Northern Ireland, justice in Wales is not devolved. There is no separate justice system here, and justice is a retained function of the Westminster Government. If only things were that simple.

It is important to appreciate that justice has, to an extent, already been devolved. Because tribunals were administered by sponsoring Government Departments, where substantive areas of government have been devolved, the tribunals within those areas have been devolved too. As I said earlier, tribunals are part of the justice system - in fact a very significant part - and insofar as they have been devolved, part of the justice system has been devolved too.

This should of course come as no surprise, because in (say) Scotland we see the reverse side of the same coin. Justice is a devolved function in Scotland: but in substantive areas which have been retained such as welfare benefits the relevant tribunals are not devolved. The Social Security Commissioners in Scotland are not devolved - they are recruited and paid by the Ministry of Justice, not the Scottish Parliament.

So, in Wales we have devolved and non-devolved tribunals. The retained tribunals will continue to be the subject of the reform programme. They will fall within the Tribunals Service, and be administered from London - although practically from a regional centre for Wales & the West, which I sincerely hope will be in Cardiff.

Turning to the devolved tribunals, where do and should these stand when measured against the two principles of reform I mentioned?

They are of course administered by the Welsh Assembly Government: and, because justice is not regarded as being devolved, they are administered effectively by the old style "sponsoring departments". Even if this were compliant with the European Convention on Human Rights, this failure properly to separate executive and judicial functions of Government would be regrettable: appellants in Wales are just as capable of being dissatisfied with an "away game" appeal as those across the water. Disgruntlement recognises no national boundaries. Of course these issues are not easy, but it is to be hoped that the Assembly Government carefully consider ways in which this issue can be addressed - by, for example, ensuring that the administration of devolved tribunals is taken away from the departments whose decisions are being challenged, and put into some separate and independent arm of Government. In practice, this is in some ways more difficult in a smaller jurisdiction: but other countries have shown that it is not only possible, but can be effective. The potential benefit is something to which I shall return.

Separation of powers would not only be constitutionally appropriate, but it would also help in addressing the challenge of the second principle - the coordination and rationalisation of the tribunal system in Wales. The challenge of this is obviously substantial. In Northern Ireland, where subject to ratification by the new Assembly a

separate reform programme is pressing forward in which the Courts Service and Tribunals Service are being merged, it has always seemed to me that no two tribunals have precisely the same constitutional and administrative set up: although whether such diversity is by chance or design is less clear. The challenges brought about in a devolutionary complex justice system are evident in Scotland too. I have mentioned that the Social Security Commissioners are not devolved: but their offices and staff are treated as being devolved. At least, they are provided by the Scottish Government. There is no difficulty with that - except that it requires good local communication. However at least in Scotland there is only one office of government with which we have to deal - that of justice in Edinburgh. In Wales, such cooperation will be the more difficult if devolved tribunal justice remains dispersed.

For an efficient tribunal system in Wales, we need to develop systems that will enable horizontal and vertical coordination and cooperation: but, because of devolution, we have also a third dimension, because we also have the factor of devolved/non-devolved.

Let me give some practical examples.

First, tribunal judges and members. In UK tribunals there is increasing recognition of the benefits of cross ticketing, to enable tribunal members to sit in any tribunal jurisdiction where they have appropriate experience and expertise, and where they are required. That ability to use tribunal members flexibly will be enshrined in the Act: but such cross assignments will only be able to take place within Tribunal Service tribunals, and not across into devolved tribunals. If devolved tribunals do not have this flexibility - and they will not have it under the Act - this would be regrettable. For example, they will not be able to "borrow" tribunal judges or members from their English counterparts. They will be required to hold parallel competitions which, for a small jurisdiction, will be relatively more expensive. The Welsh tribunals will lack the inherent flexibility that easy cross assignment will bring. By the very nature of this problem, it can only be addressed on a cross border basis: and that would again be easier if there were a focus of tribunal justice in the WAG.

Second, estate. The Tribunals Service is currently engaged in a review of estate, with a view to rationalisation. However, in Wales, this should not ignore the needs of devolved tribunals. Indeed, in Wales, there should in my view be a coordinated policy for "justice estate" covering the courts system as well as both devolved and non-devolved tribunals, to ensure that local justice is maintained in Wales, and particularly rural Wales. By coordinating requirements for office administration and hearing rooms across all of the various shades of the justice system in Wales, it will render viable facilities for justice in areas where part of the system looked at alone could not make a business case.

What are the appropriate organs for this effort in coordination? I have every expectation that the Welsh Committee of the Administrative Justice Council envisaged in the Bill will be an effective tool. The tribunal judges in Wales have already set up a Welsh Tribunals Judicial Group, at which these issues are considered. As already indicated, there would be a welcome for any initiative by the new Welsh Assembly Government with a view to coordinating the administration of the Welsh devolved tribunals, and enabling a proper dialogue with both the judiciary in Wales and the Ministry of Justice in relation to matters which overarch both retained and devolved tribunals.

The challenges posed by this need in Wales for coordination should not be underestimated. However, I firmly believe that, if these challenges are met, the

potential benefits of success in Wales would be very great. Our size - small - is sometimes an advantage. We are able to do things that would be impossible for larger jurisdictions - and hold a wider perspective that would be possible in such jurisdictions. For example, the Social Security Commissioners, Employment Appeals Tribunal and the Transport Tribunal - all second tier appeal tribunals - already sit regularly at the Civil Justice Centre here in Cardiff. Under the Bill, it is proposed that appeals from at least some first tier devolved tribunals (SENT and possibly the Welsh MHRT) will lie to the new Upper Tier Tribunal (because challenges at the moment are to the (non-devolved) High Court). Facilities in Cardiff for issuing and hearing second tier tribunal appeals will be needed in any event: and there will be an opportunity to coordinate this administration with that of the Administrative Court which already sits at the Civil Justice Centre and which, it is proposed, will have a permanent office presence in Cardiff in due course. Someone who unsuccessfully challenges a Government decision with which he is not satisfied ought to be able to attend a single centre to seek to review a decision on a question of law, whether the appropriate route is by way of judicial review or appeal to a tribunal. Such a coordinated approach is inconceivable in England or even in London: but because of the national cohesion and relative size of Wales, it is least a possibility here. The potential benefits for users are obvious and great.

In Wales, we face a spectrum of opportunity. The UK tribunal reform programme is forging ahead. Wales may be left behind. However, if we take the initiative in coherently coordinating the various elements of the justice system in Wales - devolved and non-devolved, court system and tribunal system - which with a will can be done, then the coming months and years will provide perhaps a unique opportunity for giving the people of Wales better access to a significantly better administrative justice system: and that, I am sure, is our common aim.

### **Tribunals Service – an Overview**

- Formed in 2006 in biggest change to the UK Tribunals system in over half a century.
- Provides independent central administration to 27 central government tribunals.
- Important part of the justice system, more than half a million people bring cases to tribunals each year, and we resolve more disputes than any other branch of the justice system.
- Many cases involve most vulnerable people in society.

#### Purpose to:

- Provide a more responsive and efficient Tribunals Service and administration
- Promote and protect the independence of the judiciary
- Contribute to the improvement of the quality of decision making across government
- Reform the tribunals' justice system for the benefit of customers and the wider public.

#### Future Direction

The picture in 2005

Prior to the launch in 2005:

- Assorted tribunals often sponsored by the original decision makers
- 23 Distinct jurisdictions each with their own judiciary
- Case Processing in 40 locations
- 136 single tribunal hearing centres (many poor quality & underused)
- Jurisdictional based management structure
- Around 2,850 staff, 84% of whom are in front line services
- Various incompatible IT infrastructures
- Limited alternative dispute resolution processes available – only in Employment Tribunals

The Government's response to Sir Andrew Leggatt's "Review of Tribunals: One Service One System" initiated a huge programme of reform to modernise the justice system and improve service delivery. These changes will result in:

#### Future Direction

The expected position in 2011

- Unified Tribunals Service independent of original decision makers
- 2 Generic Tribunals (First Tier /Upper) to which most jurisdictions have been transferred, and judicial experience shared across the system
- 6 Administrative support centres (ASCs) focusing on the end to end administration of a case to support the delivery of hearings in a complementary hearing centre network. ASC's will be located in Birmingham, Cardiff, Glasgow, Leeds, Leicester/Loughborough, Manchester/Liverpool.

- Around 40 multi-jurisdictional hearing centres in major towns and cities making more services available at a single centre for our customers. Over all there will be three types of hearing centres
  - Core – located in the most densely populated areas;
  - Permanent – providing full time satellite venues within a reasonable travel distance for customers; and
  - Casual – (not included in the 40) which by their nature will be used as required to supplement the coverage to provide local hearings.
- Regional Management Structure, with 2 regions each subdivided into 3 areas that promotes consistent service & avoids duplication of management responsibilities.
- Around 2,400 staff, 90% of whom are in front line services.
- Single IT network providing efficiencies of scale and a base for electronic case management systems and user e-services.
- Proportionate dispute resolution processes providing customers with solutions that are appropriate for the issue at stake.

### **The Regional Structure**

- The new structure is a key step in getting the Tribunal Service to start to look and feel like a unified/single organisation.
- Transition to the new structure is expected to be completed by the end of this financial year in March 08.
- Director appointments were the first step now running an Expression of Interest exercise to fill the Senior Managers roles in the new structure (which we hope to finalise by end of July).
- There will be an area manager responsible for operational delivery in the Wales & South West area – across all tribunal jurisdictions.
- We will then be able to start to move the rest of the organisation out of their jurisdictions and into the new regional structure.

### **Tribunals Service in Wales**

We believe the changes will result in improved service delivery:

- ASC in Cardiff will open up recruitment opportunities as we do not currently have enough existing staff working in Wales to fill the ASC.
- Detail is still to be worked out but the guiding principle will be for the Cardiff ASC to administer cases pertaining to customers in Wales from the three largest Tribunals ETS, SSCSA & AIT.
- Complementary Hearing Centre network to facilitate local hearings. The venue locations are still to be determined and we are currently working with local staff and judiciary to validate our thinking.
- Hearing centre network will include a combination of Core, Permanent & Casual hearing centres.
  - Core - Large centres capable of hearing all types of case - fully e-enabled with judiciary, clerks and ushers permanently based there.
  - Permanent – partly e-enabled, will have judiciary & staff based there, will hold hearings everyday but will have fewer hearing rooms than the Core HC's and may not hear all types of case.
  - Casual – will be used to supplement geographic of the coverage of core & permanent HC's to ensure local hearings. Where possible will use HMCS buildings or alternatively Video Conferencing or casual hire

venues. We do not expect these venues to hear cases daily and no judiciary or staff will be permanently based there.

- We want to build better links with devolved tribunals. Tribunal Managers for MHRT and SENDIST have developed informal links with MHRT & SEN Tribunals for Wales. We need to develop similar contacts with others e.g. Planning Appeals etc.
- It could also be mutually beneficial to share administrative best practise, or even share hearing centre facilities.
- The TCE Bill will allow for a more consistent approach to onward appeals, with onward appeals being heard by the Upper Tribunal, regardless of whether or not the tribunal is administered through the Tribunals Service.
- The Tribunals Service Welsh Language scheme has been developed by the TS Welsh Language Scheme Forum.
- It sets out how the Tribunals Service will ensure Welsh & English languages are treated equally when dealing with members of the public in Wales.
- The Scheme is out for Public Consultation until 10th July 2007 (Copy can be viewed via the TS Website <http://www.tribunals.gov.uk/welsh.htm>)
- Plan to launch 'scheme' at the National Eisteddfod of Wales in Mold on 7th August.
- The Tribunals Service aims to be fully compliant within four years, and we have already started to make progress – for example:
  - Welsh speaking staff in Cardiff offices (SSCSA & ETS) with staff in SSCSA greeting customers bilingually
  - Bilingual signs in permanent venues
  - Tribunals Service publications produced in Welsh (e.g. Business Plan, Framework Document)
  - Some leaflets and forms in Welsh already – aim for all leaflets and forms to be in Welsh by later this year.
  - Support staff attending Welsh Language courses and are looking to establish Welsh Language workplace training/meetings so staff can practice the language.

## Summary

In summary the Tribunals Service in Wales:

- ASC in Wales will bring recruitment opportunities and allow cases pertaining from Wales (where possible) to be administered in Wales.
- Appellants will have access to hearings in Wales and in Welsh (where requested).
- Closer working with devolved tribunals for sharing of best administrative practice and possibly venue facilities.
- Greater consistency of onward appeals with the TCE Bill providing for onward appeals to be heard in the Upper tribunal regardless of whether they are Tribunals Service or devolved Tribunal cases.
- We also need to ensure that we work constructively with the Council on Tribunals in Wales.

## **Her Honour Judge Eleri Rees**

Justice in Wales and the Welsh language: Recent Developments

---

Thank you for inviting me to your conference. I have learnt a great deal and it has been fascinating to hear about the diverse work of tribunals.

Let me start by telling you a little about myself: I have been a Circuit Judge for the past 5 years, mainly dealing with crime in the Crown Court but also dealing with family work in the County Court.

For the last three years, I have been the Liaison Judge for the Welsh Language. I am assisted by Judge Michael Farmer who sits in North Wales. My role involves not only sitting on cases where the Welsh language is used, but a wider responsibility for ensuring that the equality of treatment of the Welsh language, as enacted by the Welsh Language Act 1993 is reflected in the practice of our courts.

I also have a positive duty to try and promote the use of Welsh Language in our courts. I hope what I have learnt in these last few years may be of use to you and that we can share best practice.

I will start by recapping where we are now in the courts and what has happened in recent years.

### **The Welsh Language Act 1993**

It took 400 years for the Welsh language to be re-instated as an official language. The Welsh Language Act 1993 established the Welsh Language Board and imposed a duty on public authorities in Wales to produce and publish Welsh language schemes. However, it is section 22 which is of particular relevance to the courts as it provided the right to use Welsh in all legal proceedings.

#### **Section 22**

*'In any legal proceedings in Wales the Welsh language may be spoken by any party, witness or other person who desires to use it, subject in the case of proceedings in a court other than a magistrates' court to such prior notice as may be required by rules of court; and any necessary provision for interpretation shall be made accordingly'.*

How did this affect the courts? Almost immediately after the Act came into force the Lord Chief Justice issued Practice Directions which governed the use of the Welsh language in the Crown Courts and the County Courts. These were later supplemented by a Protocol for the case management and listing of cases involving the use of Welsh. The posts of Liaison and Deputy Liaison Judges for the Welsh language were introduced. The Practice Directions, the Protocol and the terms of reference for the liaison judges are available on <http://www.judiciary.gov.uk/> the website of the Judicial Office.

These provide, among other things, for the courts to be formally opened and for oaths to be offered in English and Welsh, and perhaps most significantly, that in any proceedings where Welsh is to be used, that a Welsh speaking judge must manage and sit on the case.

A key requirement is that translation must be simultaneous translation. We now ensure that simultaneous translation is used in all the Crown and County Courts. It

has the advantage of avoiding unnecessary lengthening of the hearing itself and also makes communication as 'natural' as possible. The translation must be "two-way" On becoming the liaison judge, I found that it was still thought acceptable by some, that if a witness chose to use Welsh that he would be expected to listen to the question in English and then answer in Welsh. Those of you who are bilingual will know how difficult it is to sustain a dialogue using both languages,

## **The Judiciary**

During the last 2-3 years, the focus has been on the need to ensure that there are sufficient judges available to deal with cases (where Welsh is used), in the criminal, family and civil jurisdictions and at every level of those jurisdictions.

Unfortunately, during the last five years, a number of very distinguished Welsh speaking judges have retired and it is important that there are sufficient new judges to replace them. Most Welsh speaking judges, when first approached to deal with these cases, express trepidation. Therefore training had been a key issue.

The Judicial Studies Board (JSB) has been enormously supportive of the development of training for Welsh speaking judges. We recently held the second residential seminar for Welsh speaking judges and the course's aim was to increase their confidence and skills in dealing with cases through the medium of Welsh. We have also run the pilot one-day course to help some of Judges improve their linguistic skills.

The JSB has produced materials in the Welsh language and we now have our own Bench Book containing a glossary of terms and useful materials. Each Welsh speaking judge (part-time and full-time) have been provided with the Cysgliad software – a Welsh spelling/grammar checker with a tool which also corrects mutations.

There are a number of judges who are not Welsh speaking but who would like to learn Welsh. The Judicial Office has agreed that, in principle, any judge sitting in Wales who feels he or she would like to learn or re-learn Welsh should be encouraged and supported to do so. We are currently examining how this can be achieved.

Another exciting development is the Welsh Language Board's project on the standardisation of legal terms – something which the Lord Chancellor's Standing Committee on the Welsh Language has pressed for many years. The Board's team, supported by a panel of experts which includes academics, lawyers and judges, are preparing a definitive library of legal terms in Welsh. When complete, it will be freely available on the web and it will serve to increase confidence in the validity of the terms approved and promote consistency through their use.

The Judicial Office has agreed that its new database will include information identifying those judges who can speak Welsh. This may seem a small detail but in fact will be of great help to us when seeking assistance with cases which our local Welsh speaking judges cannot sit on e.g. because the case involved a specialist jurisdiction or knowledge of a party or witness would disqualify them.

The Judicial Appointments Commission has also taken on board our concerns that there are insufficient judges in Wales who are Welsh speaking and it has promised to keep the situation under review.

## **The Magistrates**

It should be noted that, in the Magistrates' Courts unlike other courts in Wales, Section 22 entitles any party or witness to use Welsh, *without giving prior notice* thereby posing an even greater challenge for the Magistrates Courts.

About a year ago, my terms of reference were extended to include the Magistrates' Courts in Wales. I set up a Working Group consisting of magistrates and legal advisers from different areas in Wales to examine what was actually happening in relation to the Welsh language in our Magistrates Courts, and with a view to making some recommendations on best practice.

We carried out a survey of all the Magistrates' Courts in Wales and the responses showed that that the practice varied greatly. We have concluded that the best way forward is to produce a Protocol for the use of Welsh in the Magistrates' Courts. The final version is likely to direct that, where notice has been received that a party or witness wishes to use Welsh, the court must arrange for the Bench to consist of Welsh speaking magistrates and if translation is required, the use of simultaneous, not sequential, translation.

The Judicial Studies Board has been enormously helpful and is undertaking a training needs analysis for magistrates. In future, there will be relevant training, not only for those Welsh speaking magistrates who take the chair in proceedings where Welsh is used, but for all magistrates appointed to sit in Wales in order to raise awareness of the language's status and the appropriate way to deal with those who choose to use Welsh in the courts.

In our survey, it became evident that, over the next five years, there is likely to be a sharp decline in the number of Welsh speaking magistrates on most of the Benches in Wales. The current guidance to Advisory Committees is interpreted as prohibiting them from taking the linguistic needs and profile of the local area into account when making appointments. This is a matter of real concern upon which we will be making representations.

The Working Group has also tried to identify ways of promoting bilingualism and the use of Welsh in court. We shall be advocating that all court forms are automatically produced in a bilingual form - not in two separate versions but with the Welsh and English side by side on the same form or document. I was interested to hear about your proposals for the use of bilingual forms and I would strongly recommend that you adopt this same key principle.

We have also tried to raise public awareness— as a first small step we have produced this poster ("*Mae croeso i chi ddefnyddio'r Gymraeg yn y Llys. You are welcome to use the Welsh language in court*"). It has been displayed in every magistrates court but sadly, as yet, we have not witnessed a stampede of people coming forward to do so.

## **The Way Forward**

We now have nearly 600,000 Welsh speakers in Wales. 40% of 5-15 years olds speak Welsh. 23% of our schools are Welsh medium schools. The number of Welsh speakers is increasing. So why do so few people exercise their right to use Welsh in court?

My explanation would be along the following lines. The public perception is that it is not 'normal' to use Welsh in court. Perhaps that is not surprising when one considers that it has taken 400 years to turn the clock back and for Welsh to regain its status as an official language. Welsh speakers of my generation were brought up to regard English, not Welsh, as the language of school and work (apart from the agricultural community). Our education was designed to make us truly bilingual and proficiency in English was a prerequisite for a successful career, especially in the law. It is not therefore surprising that, the concept of using Welsh in legal proceedings, is an alien one, for most of us.

We face the challenge of not simply changing the practice of our courts, but also of changing the culture and attitude of those who work in them and those who are the customers of the court, willing or otherwise.

### **Guiding Principles:**

The following are my personal views as to the guiding principles which must be followed if we are to achieve that change. Firstly, we need to move away from the perception that a party or witness should establish a need for them to use Welsh in court – it is entirely a matter of choice.

When I attend a JSB course in England, I am frequently asked by colleagues 'why would anyone want to use Welsh in court?'. If I respond by giving the example of a young child from a Welsh speaking home and who attends a Welsh medium school, who was video interviewed in Welsh, they immediately understand, because they can see the "need". They find it far more difficult to understand why an adult, fluent in English would elect to speak Welsh in court. The problem arises because we are a truly bilingual nation - in the sense that apart from very young children and perhaps a few of the elderly, all Welsh speakers are fluent in English too.

Secondly, we need to move away from the concept that we 'permit' the use of Welsh in court, or that somebody must exercise their 'right' to use Welsh. We need to positively encourage the use of Welsh.

We have a long way to go. I have heard a police officer from mid Wales describe a witness as being "difficult" because she wanted to speak to him in Welsh. When asked by me if he understood Welsh he responded that he understood Welsh perfectly.

We need to change this perception. There is still a real fear that people will be seen as 'trouble-makers' or to be making some kind of political statement if they choose to speak Welsh in proceedings.

Thirdly, we need to make it 'normal' to use Welsh in our courts in Wales – by offering positive encouragement, by offering a true choice, at the earliest opportunity and offered in a value neutral way. Some of the Welsh-speaking public lack confidence in their linguistic skills, fearing that their Welsh is somehow not "good enough" for the court setting. We must make it clear that the fact that their Welsh is not that of the pulpit, academia or the BBC does not matter and if they slip in the odd English word or "Wenglish", that does not invalidate their choice of language.

We, who sit on such cases, must examine the way we communicate in the Welsh language and consider how we pitch our linguistic level, for example by reverting to jargon etc., something which we do, far too often, when using the English language.

Last but not least, we need to inspire public confidence amongst Welsh speakers, that they will not suffer any disadvantage if they choose to use Welsh in our courts. The most effective way to do that is to ensure that they will know that if they do choose to use Welsh, they will be communicating directly with the tribunal or court in question because the judge, chairman, magistrates and members will also be bilingual.

Diolch am wrando – thank you for listening

## The Administrative Justice Scene in Scotland

Alistair MacLeary, Chairman, Scottish Committee of the Council on Tribunals

---

“We need modern laws for a modern Scotland. Our laws must be suitable for the way we live now. They must be clear, fair and understandable. They must provide accessible ways to sort out problems, protect rights and resolve disputes if things go wrong.”<sup>1</sup>

These are not my words. These are the words of Cathy Jamieson MSP, then Minister for Justice, in the foreword to a review of Civil Justice in Scotland published earlier this year.

Justice is a highly significant area of devolved administration in Scotland and the Scottish Parliament has been active in reviewing the criminal and civil justice systems clearly seeing these as areas of necessary reform within our distinctive legal system. However, as yet there has been little interest in administrative justice although there is every reason to believe that it also requires review.

It might have been thought that the White Paper<sup>2</sup> and the advent of the Bill<sup>3</sup> would have stimulated interest. But a legislative consent motion to accept the terms of the Bill was passed through Parliament without debate having received scant interest from the Justice 2 Committee which scrutinised it.

In Scotland the reality is that administrative justice has had a low profile. There has been little understanding of what it means and there has been a lack of interest from politicians and the public. It may also be, of course, that those who may have thought about it have not perceived any easy answers.

That there are issues to be addressed is without question. At the UK level Sir John Bourn, head of the National Audit Office, has said that too many members of the public see the way government bodies handle complaints and appeals as being complex, slow-moving, expensive and time-consuming.<sup>4</sup> The scale of the problem can be appreciated through the numbers involved. In 2003-04, citizens made over 1.4 million complaints or appeals against perceived poor treatment, mistakes, faults or injustices in dealings with central government.

At the local level the Scottish Committee has persistently raised in its Annual Reports, issues which require attention in the Scotland such as,

- *There is a lack of a mandatory training programme for Scottish tribunals to include diversity and fairness – there is a need centralised structure under the aegis of the Judicial Studies Committee and for Ministerial direction that panel members must be trained before sitting on tribunals.*

---

<sup>1</sup> *Modern Laws for a Modern Scotland: A Report on Civil Justice in Scotland* Scottish Executive, Edinburgh, February 2007 Page1

<sup>2</sup> *Transforming Public Services: Complaints, Redress and Tribunals* Department of Constitutional Affairs July 2004

<sup>3</sup> *Tribunals, Courts and Enforcement Bill* July 2006 Cm 6885

<sup>4</sup> *Citizen Redress: What citizens can do if things go wrong with public services.* National Audit Office March 2005

- *There is a lack of Departmental and Ministerial will to modernise old rules for some systems which are no longer ECHR compliant e.g. in education and health.*
- *There is a lack of appropriate advice and representation: there no single source of advice and information; CABs, lay centres and lawyers all have specialities but there is no functional referral system between agencies.*
- *Some tribunal systems are stuck in the past – there is no open recruitment or transparency.*
- *There is no centralised recruitment – there is still too much recruitment by means of word of mouth or ‘tapping on the shoulder’ methods. The Scottish Executive should set up central unit as it has done recently to recruit Justices of the Peace.*
- *Different systems operate in a vacuum, and there are overlapping systems, e.g. in education appeals, which are not explained to the public*
- *There is a danger that devolved tribunals will be treated as second rate compared to those within the Tribunals Service.*

These issues must be addressed and it is part of the mission of the Scottish Committee that they will be addressed. Accordingly we have been involved, with others, in edging levers under the rock of inertia.

Firstly, in collaboration with the Scottish Public Services Ombudsman the Scottish Committee has commissioned research into the landscape of administrative justice. This project is being undertaken by Edinburgh University with funding from the Scottish Executive and is overseen by a Steering Group involving principal stakeholders such as the Scottish Consumer Council. This review will:

- map the current framework of administrative justice in Scotland and provide a covering description of all current Scottish and UK wide tribunals;
- describe the role of the main institutions of administrative justice;
- analyse the strengths and weaknesses of the existing system of administrative justice;
- consider how well the existing institutions work as a coherent system;
- and consider the nature and direction of future reforms to meet the needs of Scottish citizens.

Secondly, the Scottish Committee has been trying for some time to initiate improvement in the provision of training for tribunals in Scotland and has carried this crusade through to the recently established Scottish Tribunals Forum. The Scottish Tribunal Forum, which maintains liaison between the tribunal judiciary and the Senior President of the Tribunals Service and considers issues across the whole spectrum of tribunals in Scotland, is now drawing down funding from the Scottish Executive to conduct a scoping exercise designed to identify the rationalisation of training across all tribunals.

Then there are further developments which are helping and will help to raise the profile of dispute resolution and administrative justice in Scotland.

There is related work<sup>5</sup> being undertaken by Professor Lorne Crerar of an evaluation of the role complaints handling plays within external scrutiny regimes with a view to suggesting a framework within which improvements can be made. This review will be published in August.

---

<sup>5</sup> *Independent Review of Regulation, Audit, Inspection and Complaints Handling in Scotland*

His preliminary findings<sup>6</sup> throw up the same kinds of concerns, a few of which are listed here:-

- *There is no single sector-wide view of the purpose complaints handling should fulfil or how the outcomes should be used.*
- *The arrangements for complaints handling are overly complex without consistency in the 'complaints paths' adopted in each sector*
- *The 'administrative architecture' for complaints handling lacks a strategic framework.*
- *There is inconsistency in reporting and in powers of sanction among scrutiny bodies.*
- *There are no powers to ask providers to improve their internal systems.*
- *In the NHS the complaints system is entirely 'internal' with limited oversight from the outside.*

Also an independent Scottish Legal Complaints Commission is being created<sup>7</sup> with the aim of increasing public confidence in the justice system by putting service users at the heart of the complaints handling process.

The main function of the Scottish Legal Complaints Commission will be to handle consumer or service complaints. However, professional bodies will retain responsibility for professional discipline and will handle complaints about the conduct of legal practitioners. The Commission will take over the role of the Scottish Legal Services Ombudsman in overseeing the way professional bodies handle the conduct of complaints and will have the power to enforce its recommendations.

These developments, and most immediately the latter, have begun a process of focussing Executive interest in administrative justice. When the mapping exercise is completed it is intended that a report will be submitted to the Minister of Justice and that there will be engagement with Parliament through presentation of the findings. Taken together with the findings of the Crerar Report there should be significantly greater awareness not only of functional difficulties within components of the administrative justice system but also an appreciation that the relationship of the components themselves within the overall architecture of administrative justice leaves something to be desired.

Against this background the Scottish Committee will hope to find more opportunities for influencing the future of administrative justice as the new Administrative Justice and Tribunals Council (AJTC) is formed later this year.

*Our strategic objectives will therefore include:-*

- *Establishing liaison with Tribunals Service in Scotland.*
- *Maintaining a visits programme but with more concentration on devolved tribunals. whilst ensuring that Tribunals Service related matters – hearing centres, administration etc – are not jeopardising the operation of GB tribunals in Scotland*
- *Driving the agenda for tribunal training in Scotland*
- *Re-establishing clear lines of communication with user groups*

---

<sup>6</sup> *Complaints Handling as Scrutiny* Paper submitted to the ESRC Seminar Series in Administrative Justice, University of Edinburgh June 2007

<sup>7</sup> Legal Profession and Legal Aid (Scotland) Act 2007

- *Developing a more positive relationship with the Justice Committee and Scottish Ministers*
- *Increasing networking and intelligence gathering to fulfil the extended remit of 'administrative justice landscape'*

### **Taking the last two objectives in particular**

The Bill gives the Committee a direct line to Scottish Ministers, in particular the ability to advise on what is happening and what is not working properly, without waiting to be asked. This will greatly enhance Parliament's knowledge of administrative justice and will enable the Committee to highlight long-standing or emerging problems at an early stage in the development of Scottish political priorities and the legislative programme. The Committee will aim to foster better and direct links with Parliamentary Committees. We will strive to arrive at the point where the Justice Committee feels confident to seek our views and canvass our opinion on administrative justice matters.

It will be essential to ensure that it is understood that the AJTC reports to Parliament and not to the Scottish Executive officials or the Ministry of Justice officials and that it is Ministers, not the departmental officials, who will agree the Council's programme of work. The AJTC will continue to be a statutorily independent body under the auspices of the Ministry of Justice and the Scottish Committee will be careful to maintain its independence from the Scottish Executive. What we will seek to nurture is a working relationship with the Scottish Executive at official level, to encourage more detailed analysis of the administrative justice system and to support recommendations for any change, while retaining an arms length posture.

We will also seek a stronger relationship with the Tribunals Service, the ombudsmen in Scotland and the judiciary and establish a much closer interface with relevant organisations such as the Scottish Consumer Council

### **Relations with the Council**

The Scottish Committee expects that its relationship with the new AJTC will continue to be a very close one in terms of policy but with an increasing involvement with administrative justice as it operates in Scotland. It is important to remember that the majority of the tribunals sitting in Scotland do so as part of a Great Britain system and being part of the full Council allows the Scottish Members to influence what happens to the benefit of Scottish users when there are important local aspects to consider. Administrative justice does not operate in a vacuum in Scotland and there are as many, if not more, common elements than there are disparate ones.

The Welsh Committee of the AJTC will have the same relationship to the Council as the Scottish Committee. By definition there will be local differences. But essentially, while being constitutionally a committee of the parent body, we will be acting as the Council on matters concerning reviews of administrative justice systems and advice on the development of these systems to Welsh and Scottish Ministers thus performing a parallel role to that of the Council in respect of England as part of the United Kingdom.

That is a daunting prospect since it is difficult to see how we can fulfil the apparent expectations of our statutory duties given the present state of knowledge of the administrative justice system and given the limited resources available.

We will no doubt begin at the beginning and as conscientiously as we can pursue that which will be practical and useful. However, the development of a framework of principles is one of the future AJTC's strategic objectives. We will seek to ensure therefore that any improvement of administrative justice in Scotland will proceed not on the basis of structures but of principles.

## **Administrative Justice Scene in Northern Ireland**

Siobhan Broderick

---

### **Introduction**

1. I provided you with a brief outline in November last year of progress in Northern Ireland in respect of establishing a unified Court and Tribunals Service. As I am sure you all are aware the political landscape has changed dramatically in Northern Ireland since then. We now have a restored Assembly which appears to be working in an efficient and coherent manner. Not surprisingly, this event has had many ramifications not least upon our programme to establish a unified tribunal service.
2. Before I get distracted into a discussion about the political environment in Northern Ireland, I intend to step back a moment and look at – as the title to my talk refers – the wider administrative justice scene in Northern Ireland.

### **Administrative justice scene in Northern Ireland**

3. This landscape like Scotland, England and Wales covers complaints to departments or agencies responsible for making decisions about individuals, internal reviews, independent complaints handlers, ombudsmen, judicial review and tribunals. We have done some preliminary work to identify and sketch out the key aspects of this landscape. However, as was touched upon at the Conference in Belfast there is a lot of work in filling out the detail in this map and I would suggest that for Northern Ireland this is more difficult because –
  - There has been no structured or thought through review of administrative justice or tribunals in Northern Ireland. The remit of the Leggatt (and its predecessor the Franks) Report did not extend to Northern Ireland and consequently neither Leggatt nor the Government's response, the White Paper "Transforming Public Services", specifically review the Northern Ireland landscape;
  - The constitutional arrangements in Northern Ireland which mean that while many tribunals are the responsibility of the new Northern Ireland Executive, others are not, either being administered by the Secretary of State for Northern Ireland (such as Criminal Injuries Compensation Appeals Panel (NI)); by the Court Service (Northern Ireland Valuation Tribunal) or are UK wide tribunals administered by a NI department, Court Service or a Whitehall department
4. However, what is quite clear from even a cursory glance at the Northern Ireland landscape is the absence of an oversight body like the Council on Tribunals. As you know, the Council (and its successor the Administrative Justice and Tribunals Council) plays no real role in respect of tribunals in Northern Ireland.
5. What may more easily be mapped out is the tribunal system in Northern Ireland. As I mentioned earlier, this is a complicated landscape with tribunals broadly falling into 8 categories (I won't bore you with the subtle differences,

safe to say if anyone is particularly interested I can arrange for this to be forwarded). The tribunals vary widely in size and in the complexity and nature of the cases they deal with. Many are comparable to tribunals in England, Wales and Scotland. There are three relatively large tribunals, the Appeals Service, the Industrial and Fair Employment Tribunal and the Planning and Water Appeals Commission. The remainder are smaller and include those that are only occasionally active and some that have never sat and are effectively moribund.

6. There are only a small number of full-time judicial tribunal members, concentrated in the 3 tribunals I mentioned earlier. The vast majority of tribunal judiciary are appointed on a part time basis. There are differences in who appoints and the selection procedure applied. The majority, however, are appointed by the Lord Chancellor following selection by the Northern Ireland Judicial Appointments Commission.

### **What is the Court Service role?**

7. What is the role of my organisation in respect of tribunals? The Northern Ireland Court Service is the department of the Lord Chancellor in Northern Ireland and we presently administer a number of tribunals. Following on from the reforms in England and Wales, the Secretary of State for Northern Ireland last year announced that to secure greater independence and more streamlined administration, responsibility for the administration of those tribunals currently sponsored by the Northern Ireland departments will transfer to the Northern Ireland Court Service as part of a new Courts and Tribunals Service.
8. We have recently assumed responsibility for two new tribunals – the Northern Ireland Valuation Tribunal and the Traffic Penalty Tribunal and will assume, later this year, responsibility for a number of tribunals presently the responsibility of the Secretary of State for Northern Ireland, including the Criminal Injuries Compensation Panel for Northern Ireland. The remaining NI tribunals are within the transferred field i.e. within the legislative competence of the Northern Ireland Assembly. The administration of the courts however remains a matter reserved to Westminster and our minister remains the Lord Chancellor, until justice functions (essentially the police, criminal law and the courts) are devolved to the Assembly. Consequently, once the Assembly was restored the NI tribunals and the courts fell either side of the devolution divide. There is therefore another player on the field – the NI Executive – and it is obviously important that we include them in the game. The Court Service is therefore presently working with the Office of the First and deputy First Minister to seek the views of the Executive on the future development of the programme of tribunal reform and to put forward proposals for their endorsement.

### **What are these proposals?**

9. While these are currently being worked through with our colleagues in the NI Civil Service, the proposals mirror somewhat the reforms in England and Wales given the similarities between the two jurisdictions. Broadly they are –
  - a unified administration for tribunals not separate but administered with the Courts. The main argument for this unified Courts and Tribunal Service is economy of scale. In a jurisdiction as small as NI, it makes sense that

- adjudicative processes are administered by the one organisation to allow efficient use of staff and resources;
- a unified tribunal structure which will allow for the development of a coherent judicial structure.
10. To deliver these proposals we envisage three tranches of work –
- Unify the administration of tribunals with the Court Service, delivering a greater degree of independence to tribunals. This is to be achieved by way of an agency arrangement;
  - A programme of integration to deliver an efficient and manifestly independent service to tribunal users;
  - Legislation to provide a unified structure to tribunals; guarantee continued judicial independence and to create an oversight body similar to an Administrative Justice Council.

### **Devolution**

11. What is also on the horizon is devolution of justice functions to the NI Assembly. The timescale for devolution of justice is not yet clear. In the St Andrews Agreement the Government set a target for devolution by May 2008. The Assembly is to report by March 2008 on the preparations to be made; areas to be devolved and the assessment of devolution occurring in May 2008.
12. However, we are obviously thinking through what devolution means not only for tribunals but for the administration of the courts.
13. It is an interesting and changing environment in Northern Ireland not only for tribunals but for the justice system generally. In respect of tribunals we will continue to work with colleagues in the devolved administration to seek the views of the Executive on the future development of the programme of tribunal reform and to put forward proposals for their endorsement. This is unlikely given the Executive's other priorities to crystallise until the second half of this year. Our aim continues to be the reform and modernisation of the tribunal service in Northern Ireland.

## **The Administrative Justice and Tribunals Council in Wales**

Lord Newton of Braintree

---

Ladies and Gentlemen, I would like to express my personal gratitude once again to the First Minister, Rhodri Morgan and Lord Justice Thomas for giving so generously of their time to be here with us today and for sparking such lively discussions with their speeches.

I am also most grateful for the contributions from:

- Judge Hickinbottom who has highlighted the unique issues for Wales arising out of the tribunals reform programme;
- Guy Tompkins who has given us an insight into the role the new Tribunals Service will be playing in Wales; and
- Judge Eleri Rees who has confirmed the significance of the Welsh language as a key component of the justice system in a Welsh context.
- Alistair MacLeary and Siobhan Broderick for speaking on the administrative justice scene in Scotland and Northern Ireland respectively.

It is also very pleasing to see such distinguished representatives of the Welsh judiciary and the Welsh bar here in attendance today. I believe that thanks are due to Gary Hickinbottom for drawing the conference to their attention.

We also very much welcome the presence of members of a significant number of the academic community here in Wales. In fulfilling its broader remit of "...keeping the administrative justice system under review..." the AJTC will, amongst other things be expected to, "...[make] proposals for research into the system..." and we have been actively seeking to build up our network of academic contacts.

It goes without saying of course that I am also delighted to see so many representatives of what has traditionally been our core audience - I hesitate to call you the "usual suspects"! – the tribunal judiciary, tribunal administrators and government officials concerned with tribunal business, with whom we have had strong links for a long time.

As you know this is the second of our conferences in Wales.

When we held the first Conference here in Cardiff two years ago I spoke about some of the changes anticipated by the Government's 2004 White Paper "*Transforming Public Services: Complaints Redress and Tribunals*".

I would like to focus this afternoon on the Tribunals, Courts and Enforcement Bill, introduced into Parliament in November 2006, what the Bill means for the Council on Tribunals and in particular what it means in terms of the Council's role in Wales.

The Bill, considered as a whole, is a broad measure designed to implement a number of very different proposals including reforms to the criteria for judicial appointments, enforcement, debt management and the powers of the High Court in relation to judicial review.

Of particular interest to the Council, aside from the wider ranging general reforms to the tribunals sector, is the fact that the legislation will replace the current Council with an Administrative Justice and Tribunals Council or AJTC.

The 2004 White Paper envisaged a role for the Council in:

- keeping under review the performance of the administrative justice system as a whole, drawing attention to matters of particular importance or concern;
- reviewing the relationships between the various components of the system (in particular ombudsmen, tribunals and the courts) to ensure that these are clear, complementary and flexible;
- identifying priorities for, and encouraging the conduct of, research; and
- providing advice and making recommendations to government on changes to legislation, practice and procedure, which will improve the workings of the administrative justice system.

It is those White Paper proposals that the present Bill gives effect to. The historical role of the Council has mainly been to keep under review, and report on, the constitution and working of the some 80 or so tribunals under its supervision. The role of the AJTC is therefore much wider and more strategic including, as it does, (aspects of) the work of the courts, the work of ombudsmen and government initial decision-making.

In what we at the Council see as a very heartening development for the tribunals world in Wales and indeed the administrative justice system in a wider sense, the Tribunals, Courts and Enforcement Bill will reinforce the role of the AJTC in Wales by establishing a permanent Welsh Committee.

This will ensure that matters with a Welsh element or a Welsh focus will be able to receive proper consideration by a dedicated Wales based team.

Under current legislation the need for Welsh interests to be represented on the Council on Tribunals is merely expressed as an obligation on the Lord Chancellor and the Scottish Ministers, when making appointments to the Council, to “...*have regard...to the need for representation of the interests of persons in Wales...*” In practice this has meant that at any one time there is one Council member who represents the interests of people in Wales. At the moment it is Heather Wilcox.

Needless to say, there have been many other distinguished members of the Council who have come from Wales, but who were not appointed specifically to represent Welsh interests. Indeed the Council’s second chairman was none other than Gwilym Lloyd George, first Viscount Tenby, a famous son of an even more famous father.

Under the new legislation, the position with regard to Welsh representation is greatly strengthened. Just as there is now a Scottish Committee of the Council on Tribunals, so under the new legislation there will be both a Scottish and a Welsh Committee of the AJTC.

I have already alluded to the anomaly that the Council member representing the interests of people in Wales is appointed by the Lord Chancellor and the Scottish Ministers. Welsh Ministers have had no role. Under the Bill, all this will change. On the AJTC itself, either one or two members will be appointed by the Welsh Ministers with the concurrence of the Lord Chancellor and the Scottish Ministers. One of those “one or two”, if that makes sense, will be nominated by the Welsh Ministers as

chairman of the Welsh Committee, and the other (if there is one) will be a member of the Committee. The Committee will also have two or three members who are not members of the AJTC, and these too will be appointed by the Welsh Ministers. The Parliamentary Ombudsman and the Public Services Ombudsman for Wales will be ex officio members.

The role of the Welsh Committee is reinforced in the Bill through the requirement for the Committee make a separate annual report on its work to the Welsh Ministers, which must be laid before the National Assembly. There is also a recognition that the AJTC's formal work programme will include a Welsh element through the requirement to submit the programme and any substantive amendments to it to the Lord Chancellor and the Scottish and Welsh Ministers.

I think that we would all agree that these reforms have significant implications for the status of tribunals and administrative justice generally in Wales. The separate Welsh Committee of the AJTC will provide a strong voice for the people of Wales with regard to improving the administrative justice system and ensuring the fair, prompt and efficient resolution of disputes in Wales.

With legislative provisions to create the new AJTC expected to come into force before the end of this year, there is a significant amount of work to be done in advance. We hope to be in a position to set up the Welsh Committee of the AJTC by February next year. Advertisements for expressions of interest in membership are expected shortly so watch this space!

This morning we heard from Guy Tompkins about the work of the Tribunal Service in Wales. There are of course obvious links between the work of the Council and the Tribunals Service.

The tribunals encompassed by the Tribunals Service are mostly ones that are under the oversight of the Council (and in the future the AJTC). Our working relationship with the Tribunals Service is one of co-operation and collaboration, with a regular exchange of views about the working of the tribunals under our oversight and my own participation sitting as an observer on the Tribunals Service Management Board.

However, Wales like Scotland has a number of tribunals that are outside the Tribunals Service. A number of these are represented here today, including:

- the Adjudication Panel for Wales;
- the Agricultural Land Tribunals in Wales;
- the Mental Health Review Tribunal in Wales;
- the Rent Assessment Panels in Wales;
- the Special Education Needs Tribunal for Wales; and
- the Valuation Tribunals in Wales.

As elsewhere in the United Kingdom, tribunals in Wales have developed in a relatively ad hoc manner. It may well be that a useful exercise for the new Welsh Committee would be to consider ways that it could work with these tribunal systems to establish a greater level of consistency in approach. The Committee will be in the unique position of appreciating and recognising the nuances of the Welsh system but at the same time being able to draw upon lessons learnt by the AJTC in the wider Great Britain context.

We now have some time for discussion. Our speakers earlier this afternoon have outlined what is happening in Scotland and in Northern Ireland.

We'd now like to hear your views on the future of the tribunals and administrative justice in Wales, and we are particularly interested in hearing your views on what the early priorities for the Welsh Committee should be. We will of course be preparing a report of the conference, which will be of great interest to the Committee when appointed.

Thank you for taking the time out to attend the second of our conferences here in Wales – we very much look forward to working with you and coming together to discuss issues of common interest again in the future.

---