



**Law  
Commission**  
Reforming the law

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# Devolved Tribunals in Wales

## Summary of the Report

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## CHAPTER 1: INTRODUCTION

- 1.1 This is a summary of the report of the Law Commission of England and Wales' on devolved tribunals in Wales ("the Report"). The Report builds on a consultation paper, which was published in December 2020 and began a public consultation period. That consultation period ended on 31 March 2021. We received 42 responses, which are available to read on our website (save those which were provided in confidence). We are grateful to all those who participated in the consultation and volunteered their time and expertise. The consultation paper and the full text of the Report are also available on our website at <https://www.lawcom.gov.uk/project/devolved-tribunals-in-wales/>.

### Background to the project

- 1.2 The devolved tribunals in Wales have developed haphazardly. Most of them were established before devolution, and in response to the policy needs of individual government departments. Because they are devolved, they were not included in the general rationalisation of tribunals brought about by the Tribunals, Courts and Enforcement Act 2007. Instead they are still mainly governed by their original legislation. Processes and procedures vary from one tribunal to another, and there are gaps and inconsistencies. Later developments, like the creation of the office of President of Welsh Tribunals in 2017, are not properly reflected.
- 1.3 The President of Welsh Tribunals has helped to unify the tribunals, bringing some of them together and acting as a senior judicial figure, representing their interests to the Welsh Government and to the Senedd. Centralising administration of some of the tribunals within the Welsh Government's Welsh Tribunals Unit has also brought the tribunals closer together. But not all tribunals are included in these arrangements. The legislation underpinning the tribunals remains fragmented, and it is difficult to describe the existing tribunals as forming part of a "system".

### Our terms of reference

- 1.4 We have been asked to consider matters relating to a new Tribunals Bill for Wales, designed to regulate the operation of a single system of tribunals in Wales. The review included issues such as:
- (1) the scope of a tribunal system for Wales;
  - (2) the roles of the President of Welsh Tribunals and the Welsh Tribunals Unit;
  - (3) appointment and discipline of tribunal judges and other members;
  - (4) appointment of Presidents and Deputies;
  - (5) the power to make and standardise procedural rules;
  - (6) appeals processes;
  - (7) complaints processes; and
  - (8) protecting judicial independence.

- 1.5 Our approach throughout this project has been to focus on the existing tribunals, and the overarching structures which govern them. It has been beyond the scope of the project to review the wider administrative justice landscape in Wales and form views on whether there is a need for additional tribunals or routes of appeal. Instead we have focused on making recommendations which will improve the operation of the existing tribunals. Our aim is to create a resilient, flexible structure which is capable of evolving over time.

## **Recommendations and cross-references to the Report**

- 1.6 This summary provides some background to the recommendations set out in the Report. The recommendations are listed in full at the end of the summary (and again in Chapter 11 of the Report).
- 1.7 In this summary we have tried to keep citations to a minimum. Readers who wish to know more are referred to the full Report. That Report also includes an appendix, giving details of the devolved tribunals discussed in it (Appendix 4).

## **CHAPTER 2: TRIBUNALS IN WALES: DEVOLVED COMPETENCE AND DEVOLVED TRIBUNALS**

- 2.1 This chapter sets out our thinking on the scope of the project: what is a devolved tribunal? It then explains how we have applied our definition to decide which tribunals fell within the scope of the review. The chapter also briefly summarises the devolutionary framework within which the project sits.

### **The devolutionary framework**

- 2.2 The “reserved powers” model of devolution in Wales means that the Senedd can legislate on any topic, so long as it has not been explicitly “reserved” to the UK Parliament. The Government of Wales Act 2006 sets out those reserved topics.
- 2.3 The starting point to note on the devolutionary framework for this project is that “tribunals” are reserved to the UK Parliament by Schedule 7A to the Government of Wales Act 2006. “Devolved tribunals” however are an exception, meaning that the Senedd can legislate in respect of those tribunals. A tribunal is “devolved” if all of its functions are exercisable only in relation to Wales, and do not relate to reserved matters.
- 2.4 The bulk of our recommendations therefore fall within the legislative competence of the Senedd. But there are exceptions: in some areas, consent from or consultation with UK officials is likely to be required before the Senedd may make changes.

### **What is a devolved tribunal?**

- 2.5 Our view is that tribunals meeting the Government of Wales Act 2006 definition of a devolved tribunal should fall within our review. That definition certainly includes the “Welsh tribunals” listed in section 59(1) of the Government of Wales Act 2006. These are presided over by figures whose titles differ (in the Report and this summary, we refer to them as “judicial leads”), supervised by the President of Welsh Tribunals and administered by the Welsh Tribunals Unit of the Welsh Government. To avoid confusion, we refer to them in this summary as the “section 59 tribunals”.

2.6 Those tribunals are:

- (1) the Agricultural Land Tribunal for Wales;
- (2) the Mental Health Review Tribunal for Wales;
- (3) the Residential Property Tribunal for Wales;
- (4) the Education Tribunal for Wales (previously known as the Special Educational Needs Tribunal for Wales);
- (5) the Registered School Inspectors Appeal Tribunal and Registered Nursery Inspectors Appeal Tribunal;
- (6) the Adjudication Panel for Wales; and
- (7) the Welsh Language Tribunal.

2.7 Beyond that, there are a range of decision-making bodies in Wales which could fall within the definition of “devolved tribunal”. While the Government of Wales Act 2006 defines a “devolved” tribunal, it does not give a definition of a tribunal itself.

2.8 In our Report we explain that any definition of a tribunal will depend on the relevant context. We explore a collection of characteristics which often, but not always, characterise tribunals: independence and impartiality, accessibility, speed of decision-making, and the specialist knowledge of the decision makers. For our purposes, we conclude that tribunals should be characterised as bodies which adjudicate upon disputes between parties, by making binding decisions.

2.9 In Chapter 2 we apply these criteria to a range of bodies in Wales. We conclude that, in addition to the tribunals listed above, our review should include the Valuation Tribunal for Wales and school exclusion and admissions appeal panels. We conclude that Social Care Wales panels also come within this definition, but we exclude them from the scope of the review for other reasons. We also list other bodies which we do not believe should fall within the scope of the review.

## CHAPTER 3: A TRIBUNALS SYSTEM FOR WALES

3.1 This chapter explores what a tribunals system for Wales should look like. It explains the disadvantages for policy makers in Wales of the current approach to tribunal creation. Currently, if there is a need for a new route of appeal to a tribunal in Wales, the first option is to try and find a tribunal which hears similar cases, or which has panel members with relevant expertise. If no suitable tribunal already exists, either a new tribunal must be set up, or an appeal can be directed instead to the First-tier Tribunal set up by the Tribunals, Courts and Enforcement Act 2007.

3.2 Setting up a new tribunal is time-consuming and expensive, and it is difficult to predict in advance how many cases it might hear. It is also inflexible; tribunals are set up in primary legislation, making it difficult to add new ones as demand changes. An *ad hoc* approach to creating new tribunals means that differences in procedures and rules

creep in, increasing divergencies across the system of tribunals as a whole. Sending appeals to the First-tier Tribunal is a practical solution, but risks fragmenting the system of devolved tribunals in Wales and preventing it from growing.

- 3.3 These problems are not unique to Wales. The problem of how to manage the creation of new tribunals and appeal routes was considered in detail in relation to non-devolved tribunals in the report of Sir Andrew Leggatt, published in 2001. That report ultimately led to the creation of the First-tier Tribunal by the Tribunals, Courts and Enforcement Act 2007, which replaced many tribunals with a single tribunal divided into chambers dealing with different subject areas. A similar approach has since been taken in the Tribunals (Scotland) Act 2014, which set up the First-tier Tribunal for Scotland.

### **Advantages and disadvantages of amalgamation**

- 3.4 The advantages of bringing existing tribunals together into one unified structure include the following:
- (1) economies of scale; pooling of resources can lead to savings, and enable the offering of more specialist and sophisticated services to tribunal users;
  - (2) coherence; replacing an assortment of individual tribunals with one, unified structure makes for a more coherent structure, which is easier to navigate for tribunal users; and
  - (3) public profile; bringing tribunals together can increase the public profile of a unified tribunal.
- 3.5 There is, however, little empirical research supporting these supposed advantages. And there are potential disadvantages. Bringing the tribunals together risks losing expertise of panel members within each tribunal, and specific practices or procedures which work well for particular tribunals. It has been argued that increasing the role of lawyers within the tribunals can lead to a “legalisation” of tribunals (as lawyers are the “common denominator” across all the tribunals, unlike experts in education, or mental health, or agriculture). Bringing together tribunals within one unified structure could involve a significant amount of effort and upheaval in some tribunals, simply to maintain existing operations.
- 3.6 Balancing the advantages and disadvantages, we recommend replacing most of the existing tribunals (those listed in section 59, the Valuation Tribunal for Wales and school exclusion appeal panels) with a unified first-tier tribunal – a First-tier Tribunal for Wales (Recommendation 1). This tribunal would be subdivided into chambers in order to preserve existing expertise. Such a structure would allow the devolved tribunal to grow according to the demand on its services.
- 3.7 We also recommend that power to make secondary legislation to divide the tribunal into chambers should be exercised by the Welsh Ministers, with the agreement of the President of Welsh Tribunals (Recommendation 3).

## **The Valuation Tribunal for Wales**

- 3.8 The Valuation Tribunal for Wales hears cases relating to council tax and non-domestic rates. It lists many more cases than the other devolved tribunals; in 2019-2020 it listed 4,183 rating cases, 687 council tax valuation cases and 118 other types of appeal. The tribunal is not listed in section 59 of the Wales Act 2017, and so does not fall within the remit of the President of Welsh Tribunals. It is also unusual in that it is responsible for its own administration, and has a Chief Executive as well as a President. The way in which the tribunal operates also differs from tribunals listed in section 59, with panels made up of unpaid lay members advised by a specialist clerk (similar to the way in which lay magistrates are advised by a clerk).
- 3.9 We recommend that the Valuation Tribunal for Wales should form a chamber of the First-tier Tribunal for Wales (Recommendation 4).

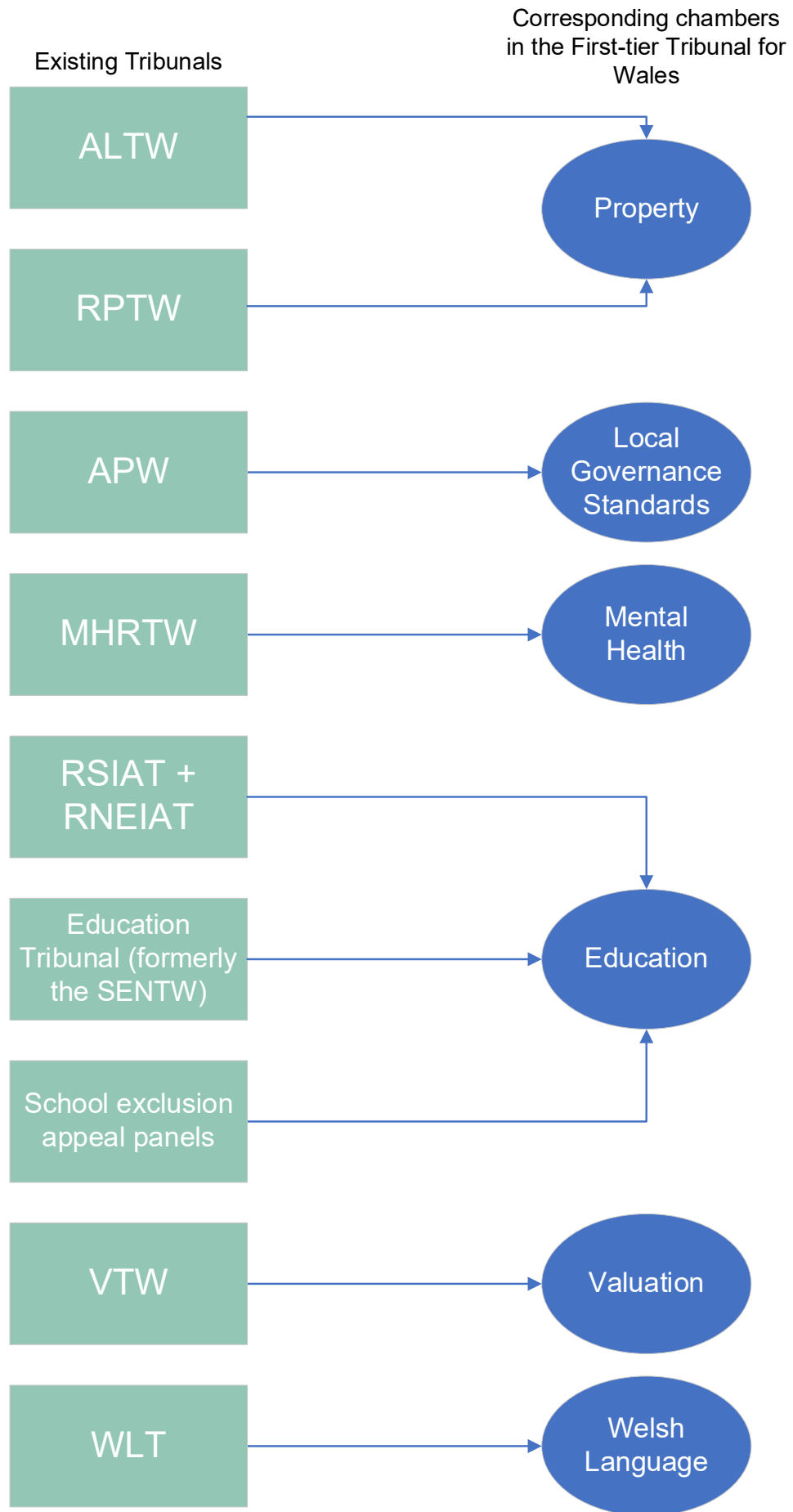
## **School admission and exclusion appeal panels**

- 3.10 School admission appeal panels hear appeals from admission authorities: local authorities or governing bodies which have made decisions about whether or not to offer a pupil a place at a school. Exclusion appeal panels hear appeals by pupils excluded from schools and pupil referral units. The panels are unusual amongst the devolved tribunals in being administered locally rather than centrally and composed of unpaid volunteers. In practice it is common for the panels to be run together, under the umbrella term of “independent appeal panel”.
- 3.11 The panels have been criticised for a perceived lack of independence, because they are administered by the body making the decision under challenge. Most tribunals used to be organised in this way, but in time it was decided that judicial independence requires a separate administration. There are however a number of benefits to organising the panels locally. It allows for the creation of panels whose members have expertise in the educational landscape of a particular area. It also facilitates hearing cases locally, reducing travel time and costs for users of the panel.
- 3.12 While drafting our Consultation Paper we considered whether school admission appeal panels might benefit from being brought within the unified tribunal system. Our view was that the large quantity of seasonal work (most cases are heard in the spring, for admission to schools in the autumn) and the tight deadlines for decisions suggest that, at least for the present, there are advantages in maintaining a local approach. That approach also permits the selection of panel members with experience of education provision within a local area.
- 3.13 These arguments apply less strongly to exclusion appeals. These are heard throughout the year, and there are fewer of them. Allowing them to be heard by the Education Tribunal for Wales (previously known as the Special Educational Needs Tribunal for Wales) would foster consistency of approach to hearing these cases. It would also give users a right of appeal that was less expensive, less formal and less adversarial than judicial review. We recommend that the jurisdiction of school exclusion appeal panels be amalgamated with that of the Education Tribunal for Wales (Recommendation 5), while the school admission appeal panels should remain separate for the time being (Recommendation 6).

- 3.14 Despite not recommending that school admission appeal panels form part of the First-tier Tribunal system, the Consultation Paper nonetheless went on to ask the same questions about them that we asked of other tribunals: for example, how should their members be appointed and disciplined? Should they be supervised by the President of Welsh Tribunals? Should there be a formal way of appealing their decisions? We think this last question is an important one, and in Chapter 4 we recommend that a new appeal route should be created. However, we only make one other recommendation about the operation of the panels: that the President of Welsh Tribunals should be consulted on any changes to the statutory guidance made available to admission authorities and panel members (Chapter 5). We have come to the conclusion, after analysing responses received in the consultation, that our terms of reference and the timeframe of the project do not enable us to make comprehensive recommendations about the way in which these panels operate. We suggest that the Welsh Government keeps the position of the school admissions panels under review, including the possibility of amalgamating them into the new tribunal structure.

### **Possible reorganisation of jurisdiction within a unified tribunal**

- 3.15 We also discuss what chambers could make up a First-tier Tribunal for Wales. The final structure of the chambers is a matter for Welsh Government. It will depend on whether any new tribunals or appeal routes are introduced, amongst other factors. But we do make some recommendations about the individual tribunals that will, at least initially, make up the First-tier Tribunal for Wales.
- 3.16 The Registered School Inspectors Appeal Tribunal and Registered Nursery Education Inspectors Appeal Tribunal have not heard a case in many years, and do not have a judicial lead; arrangements are already in place for their functions to be performed by members of the Education Tribunal for Wales. We recommend that they should be combined with the Education Tribunal into an education chamber of the First-tier Tribunal for Wales (Recommendation 8). We also recommend that the Welsh Ministers should create a Property Chamber, made up of the Agricultural Land Tribunal for Wales and Residential Property Tribunal for Wales (Recommendation 9).
- 3.17 Finally, our Consultation Paper sought views on the creation of a general regulatory chamber. Such a chamber might prove a suitable venue for any new route of appeals, for example where it is not clear how many appeals will be generated. We have concluded, however, that without knowing exactly what jurisdictions the chamber would have, it would be premature to recommend its creation. We do however recommend that the Welsh Government keep the situation under review (Recommendation 10). The diagram overleaf shows how the new unified tribunal might look.



## CHAPTER 4: APPEALS

- 4.1 In this chapter we consider the question of onward appeals from the devolved tribunals. At present, most appeals from the devolved tribunals lie to the Upper Tribunal established by the Tribunals, Courts and Enforcement Act 2007, mirroring the route of appeal from the corresponding tribunals in England. The Welsh Language Tribunal is the only tribunal that has been established by Welsh legislation, and in its case the decision was taken to direct appeals to the High Court. Appeals from the Adjudication Panel for Wales also lie to the High Court (whether through a statutory appeal or through judicial review). Some appeals to the High Court require permission to appeal. For school admission and exclusion appeal panels there is no conventional The Upper Tribunal appeal route at all.
- 4.2 Bringing the existing devolved tribunals in Wales into one structure at the first-tier level would make these inconsistencies at the appeal level more pronounced. This chapter considers whether the existing appeal routes should be rationalised and, if so, how.
- 4.3 One of the key recommendations made by the report of Sir Andrew Leggatt following his review of tribunals was that there ought to be a “single route of appeals for all tribunals”. His recommendations led to the creation of the Upper Tribunal. Like the First-tier Tribunal it is divided into chambers. There is a right of appeal to the Upper Tribunal on “any point of law arising from a decision made by the First-tier Tribunal other than an excluded decision”. Permission to appeal can be given either by the First-tier Tribunal or the Upper Tribunal.

### Appeals from devolved tribunals

- 4.4 There are not many appeals from the devolved tribunals. A table in chapter 4 of the Report shows that in 2020/2021 20 applications for permission to appeal to the Upper Tribunal were received by the section 59 tribunals, of which 15 were refused, and five were granted.
- 4.5 Appeals from decisions of the Valuation Tribunal for Wales do not require permission. The year 2019/2020 saw two statutory appeals to the High Court, and one application for permission for judicial review. The application for permission for judicial review was refused. One rating decision was appealed to the Upper Tribunal.

### Options for reform

- 4.6 Our consultation paper explored four potential options for reforming appeal routes from the devolved tribunals. These were not necessarily mutually exclusive.
- (1) No substantive change.
  - (2) Directing appeals to the Administrative Court in Wales.
  - (3) Directing appeals to the Upper Tribunal.
  - (4) Creating a new appellate tribunal: an Appeal Tribunal for Wales.
- 4.7 This was a question that split respondents. Some (for example, the Mental Health Review Tribunal for Wales, and Adjudication Panel for Wales) strongly supported

maintaining their existing routes of appeal. But others, including the President of Welsh Tribunals, were in favour of creating a new Appeal Tribunal for Wales.

- 4.8 After much deliberation, we have concluded that, along with a narrow majority of respondents, we believe that the right solution is to create a new appeal venue for Wales. We therefore recommend that legislation should create an Appeal Tribunal for Wales (Recommendation 11). Unless there are positive reasons for different arrangements, our view is that that tribunal should be the appeal venue for appeals from the First-tier Tribunal for Wales (Recommendation 13).
- 4.9 The advantages of creating a new appellate body include the following.
- (1) Consistency. All appeals from the devolved tribunals could be heard in one place. This in turn would make navigating the system easier for tribunal users and advisers.
  - (2) Coherence with our proposed structure for devolved tribunals. An Appeal Tribunal for Wales would mirror our recommendation of an amalgamated tribunal for Wales at first instance.
  - (3) Development of case law. For those jurisdictions which are based in devolved legislation and which are distinct to Wales, having one Appeal Tribunal for Wales could help develop coherent and consistent case law at an appellate level.
  - (4) Public profile. Having a single Appeal Tribunal for Wales would increase the profile of tribunal decisions at the appellate level.
  - (5) Responsiveness. An Appeal Tribunal for Wales would sit in Wales and be responsible to the needs of the tribunals of Wales (contingent, of course, on resourcing of a newly created tribunal, and of specialist judges being available).
- 4.10 We believe that the case load of the Appeal Tribunal is likely to be low, at least initially. We therefore envisage that it would appoint members with a range of experience gained from other courts and tribunals. An answer might be to cross-deploy or appoint current judges of the High Court, or members of the Upper Tribunal.
- 4.11 We recommend that the Welsh Ministers should have power by statutory instrument to establish chambers of the Appeal Tribunal and to transfer appellate jurisdiction to it. The Appeal Tribunal for Wales should, in the absence of a positive reason for different arrangements, be the appeal venue for appeals from the First-tier Tribunal for Wales.

### **School admission and exclusion appeal panels**

- 4.12 School exclusion and admission appeal panels are unusual in that they have no dedicated route of appeal. Applicants must instead complain to the Public Services Ombudsman for Wales, or the Welsh Ministers, or bring a judicial review. This is unsatisfactory; neither the Public Services Ombudsman for Wales nor the Welsh Ministers are able to consider the merits of a particular decision, while judicial review is slow, inaccessible and expensive.

- 4.13 We recommend that the jurisdiction of school exclusion appeal panels should be transferred to an education chamber of the First-tier Tribunal. In that case, applicants would use the same route of appeal as that tribunal; we envisage that being to the Appeal Tribunal for Wales. But this would still leave school admissions appeals panels without a dedicated route of appeal.
- 4.14 Such a route of appeal would ideally combine specialist expertise with an accessible procedure. It would need to be able to decide applications quickly, in order to ensure that children and young people are able to take up school places and their education is not disrupted.
- 4.15 We recommend that appeals from school admission appeal panels, on a point of law, should lie to the education chamber of the First-tier Tribunal for Wales (Recommendation 15). It will provide an existing cohort of members who will have practical experience of schools and education and will be used to sitting locally. We recommend that onward appeals from the Education Chamber should be limited to cases which raise some important point of principle or practice, or where there is another compelling reason to hear the appeal (Recommendation 16).

## **CHAPTER 5: THE PRESIDENT OF WELSH TRIBUNALS**

- 5.1 The office of President of Welsh Tribunals was created by the Wales Act 2017. Sir Wyn Williams (formerly Mr Justice Wyn Williams, a High Court judge) is the first person to have been appointed to the role. This leadership has had a considerable impact on the tribunals supervised by the President; it has given them a figurehead and a common identity.
- 5.2 The recommendations we make in the Report would create a single body to replace the existing individual tribunals. The President of Welsh Tribunals would have an important role in steering the tribunals through this period of reorganisation. Our recommendations on appointments and discipline (Chapters 7 and 8) and tribunals administration (Chapter 9) would also give a greater role to the President. This chapter looks at other aspects of the role.

### **Existing responsibilities of the President of Welsh Tribunals**

- 5.3 The President of Welsh Tribunals has two responsibilities. The first is “inward-looking”. Section 60(5)(a) of the Wales Act 2017 makes the President responsible for:

The maintenance of appropriate arrangements for the training, guidance and welfare of members of the Welsh tribunals within the resources made available by the Welsh Ministers.
- 5.4 The second responsibility is outward-looking: to represent the views of members of the devolved tribunals to the Welsh Ministers and other members of the Senedd. This is usually done through annual meetings with the First Minister and an annual report, presented to the First Minister and the Presiding Officer of the Senedd. The President has also recently given oral evidence to the Senedd’s Legislation, Justice and Constitution Committee.
- 5.5 The Wales Act 2017 does not explicitly envisage a judicial role for the President of Welsh Tribunals. However, the President has in the past expressed the view that “as a

senior judge, the President is entitled to sit as the legal chair of each of the Welsh Tribunals”, though should only do so if the President and judicial lead of the tribunal agree it would be inappropriate for the judicial lead to sit on a particular case.

### Potential reforms

- 5.6 While the creation of the office of President of Welsh Tribunals is relatively recent, there have been calls for its reform, from both the Commission on Justice in Wales (the “Thomas Commission”) and the President of Welsh Tribunals himself.
- 5.7 The President has argued that a “specific judicial role” be formulated for the office. Our view is that this would be a valuable development, which would assist in ensuring the President continues to have a day-to-day understanding of the work of the tribunals. We therefore recommend that the President of Welsh Tribunals should be the presiding judge of both the First-tier Tribunal for Wales and also the Appeal Tribunal for Wales (Recommendations 17 and 18).
- 5.8 We also considered whether President’s remit should be extended beyond the section 59 tribunals. The Commission on Justice in Wales has suggested that the role should be extended to other bodies established under Welsh law or by the Welsh Government.

### School admission and exclusion appeal panels

- 5.9 In our Consultation Paper we considered whether the remit of the President should be extended in relation to school admission appeal panels. We conclude in the Report that this would be a difficult role for the President, unless school admission appeal panels were brought into the First-tier Tribunal. Because the panels are not run centrally, it would require the President to coordinate a large number of admission authorities. Instead we recommend that the President should be consulted on any revised School Admissions Appeal Code (Recommendation 19). It is already a requirement of section 85(2) of the School Standards and Framework Act 1998 that the Welsh Ministers should consult such persons as they think fit.

### The Valuation Tribunal for Wales

- 5.10 In the Consultation Paper we also explored whether the President of Welsh Tribunals ought to supervise the Valuation Tribunal for Wales. We recommend in Chapter 3 that the Valuation Tribunal for Wales should become a chamber of the First-tier Tribunal for Wales. If this recommendation is not pursued, we recommend that the Valuation Tribunal for Wales should be subject to the supervision of the President of Welsh Tribunals (Recommendation 20).

## CHAPTER 6: PROCEDURAL RULES

- 6.1 The procedural rules for the devolved tribunals in Wales are inconsistent, complex and out of date. Some date back to the 1970s and are not written with Wales or with modern tribunal practice in mind. This is a problem for tribunal users, who face difficulties understanding the rules. It is also a problem for tribunal members, who lack modern case management powers. The lack of clarity in rules can also lead to avoidable appeals.

## **Making and maintaining the procedural rules**

- 6.2 We concluded that one of the reasons why problems have arisen with the rules is that there is no central mechanism for considering common problems or making sure the rules are kept up to date. Within the reserved tribunals, procedural rules are made by the Tribunal Procedure Committee established by the Tribunals, Courts and Enforcement Act 2007.
- 6.3 We recommend the establishment of a similar committee for the devolved tribunals in Wales (Recommendation 21). The committee would keep the rules under review, stopping them becoming out of date. Improvements to the rules could be made at the same time for all tribunals, preventing divergencies creeping in. It could also play a role in monitoring differences between procedural rules in the reserved and devolved tribunals. We recommend that the committee should be able to set up sub-groups, to focus on particular areas of work.
- 6.4 We recommend that the President of Welsh Tribunals should be responsible for chairing the Tribunal Procedure Committee and appointing its members (Recommendation 23). The President's ability to appoint members should be guided by factors set out in legislation, including the need for a committee to have access to persons with relevant expertise, and persons who have experience of appearing in front of the tribunal (Recommendation 24).
- 6.5 We recommend that rules are made by the President of Welsh Tribunals, in a form agreed by a majority of the Tribunal Procedure Committee, and approved by the Welsh Ministers (Recommendation 25).

## **The structure of the rules**

- 6.6 There are two important structural questions about procedural rules in the tribunals system. The first is whether the rules should be standardised, where possible. In our view this would be desirable. There will be cases where different rules are required, to reflect the needs of the different chambers. And it is possible that greater standardisation may risk introducing divergence between devolved tribunal rules and rules of the existing First-tier Tribunal.
- 6.7 On the other hand, standardisation could make rules more accessible for users: having reviewed the rules, the clearest examples of drafting could be adopted. It could also make things simpler for administrative staff and cross-ticketed judges, as judges would not have to familiarise themselves with a new set of procedural rules when moving into a new jurisdiction. In our view there are many areas (for example, in relation to sending documents to the tribunal and other parties) where chambers could use the same rules. The challenge is to identify the correct level of standardisation; achieving the benefits, while not getting rid of rules which reflect real differences between jurisdictions. Where this is possible, we think standardisation should be encouraged. We recommend that the Tribunal Procedure Committee should adopt common procedural rules across the tribunals as far as is appropriate (Recommendation 27).
- 6.8 The second question is about how the rules are presented. We have concluded that there should be a set of procedural rules for each chamber of the First-tier Tribunal for Wales (Recommendation 28). This will be easier for users of the tribunal, who will not

have to leaf through annexes or additional sections of the rules that do not apply to their case. To avoid any unintentional differences creeping in between the First-tier Tribunal and First-tier Tribunal for Wales, we recommend that the Committee should have regard to the desirability of consistency between the rules of the devolved tribunals and those of other courts and tribunals in the UK (Recommendation 29).

### **Common problems across the devolved tribunals**

6.9 Our Consultation Paper considered some specific examples of how the procedural rules could be improved. Having recommended the creation of a Tribunal Procedure Committee for Wales, we think it is for that committee to decide on the content of the rules. But we do recommend (Recommendation 30) that the rules should include:

- (1) an overriding objective;
- (2) a duty of the parties to cooperate with each other and the tribunal;
- (3) provision for service of documents by electronic means;
- (4) a power for the First-tier Tribunal to review its own decisions; and
- (5) rules on remote hearings.

## **CHAPTER 7: APPOINTMENTS**

7.1 The procedures for appointing members of the devolved tribunals are key to demonstrating to the public that the tribunals are independent and impartial. The procedures employed should be fair, open and based on merit. The current system meets those standards. Responsibilities for appointments are, however, inconsistent, largely because of the piecemeal development of the tribunals. Later rules reflect the progress of devolution, while procedures that were developed earlier do not.

### **Appointments in the devolved Welsh tribunals**

7.2 Appointment functions within the section 59 tribunals are generally split between the Lord Chancellor on the one hand, and the Welsh Ministers on the other. The Lord Chancellor tends to be responsible for appointments of judicial leads, while the Welsh Ministers are more usually responsible for appointing members. Most tribunal appointment processes also distinguish between legal and lay members, with the Lord Chancellor more likely to be responsible for appointing the former.

7.3 The Welsh Language Tribunal is the most recently created tribunal. All its appointments are made by the Welsh Ministers. Additional safeguards have been introduced to guide how these appointments are made. When making appointments, the Welsh Ministers are required by regulations to have regard to the need to uphold the independence of the tribunal and the rule of law.

7.4 Other tribunals have different processes. The President of the Valuation Tribunal for Wales is elected by its members. Other members of the tribunal and chairpersons are appointed by a panel of members and national representatives.

## **The Judicial Appointments Commission**

- 7.5 The Judicial Appointments Commission (the “JAC”) is an independent statutory body, created by the Constitutional Reform Act 2005. It selects candidates for appointment to courts and tribunals in England and Wales, and to some tribunals with a UK-wide jurisdiction. The candidates it selects are usually appointed. It runs selection processes for the section 59 tribunals.

## **Reform of appointments in Wales**

- 7.6 Our view is that the appointing authorities for the devolved tribunals should be the same. The current mixed position is the result of historical development, rather than any policy choice reflecting differences between the tribunals. A number of guiding principles are relevant to deciding who should make appointments. These include the following.
- (1) Independence. It has long been recognised that the departments responsible for taking appealable decisions should not be involved in the appointment process for tribunals that review those decisions. One way of increasing independence is to transfer responsibility for appointments from the executive to the judiciary.
  - (2) Seniority. Another relevant principle is the seniority of the appointing authority. Involving an important figure with government appointments underlines the importance of the office itself. This helps to explain why the Welsh Ministers and Lord Chancellor share these responsibilities at present.
  - (3) Ability to assess candidates. A further principle is that the appointing authority should be in a good position to assess the merits of the recommendation made by the selection authority. This is why the Senior President of Tribunals (the head of the tribunals created by the Tribunals, Courts and Enforcement Act 2007) now makes appointments to the UK First-tier and Upper Tribunals.
- 7.7 Applying these principles, we recommend that members of the First-tier Tribunal for Wales should be appointed by the President of Welsh Tribunals (Recommendation 31). The President is more likely than the Welsh Ministers to be familiar with the needs of individual tribunals, and is already consulted in relation to appointments of legal members of the restricted patient panel of the Mental Health Review Tribunal for Wales. The President is also demonstrably independent of the Welsh Government.
- 7.8 We recommend that Presidents and Deputy Presidents of the First-tier Tribunal for Wales should be appointed by the Welsh Ministers (Recommendation 32). We recommend that the same arrangements should be put in place for the Valuation Tribunal for Wales, reformed as a chamber of the First-tier Tribunal for Wales (Recommendations 33 and 34).
- 7.9 We also recommend that the Welsh Ministers should appoint members of the Appeal Tribunal for Wales, with the agreement of the President of Welsh Tribunals (Recommendation 33).

## Role of the Judicial Appointments Commission

- 7.10 The advantage of having one body using standard selection processes across the devolved tribunals is clear. Consistency is particularly important given that “cross-ticketing” enables members of section 59 tribunals to sit in other section 59 tribunals, and in the First-tier Tribunal. Involving the JAC ensures that all appointees are assessed to the same standard and by the same body.
- 7.11 We have considered whether Wales might benefit from its own appointments body, following the examples of Northern Ireland and Scotland. We have decided however that, given the relatively low volume of appointments to the devolved tribunals, the level of investment and administrative effort required to set up a separate appointments body for Wales is not justified at present. We recommend that the JAC should be responsible for selection of appointments to the First-tier Tribunal for Wales and to the Appeal Tribunal for Wales (Recommendation 36). That would include members of the Valuation Chamber of the First-tier Tribunal (Recommendation 37).

## CHAPTER 8: COMPLAINTS AND DISCIPLINE

- 8.1 The statutory framework governing complaints about conduct of members of the devolved tribunals is complex, inconsistent and not accessible for tribunal users. This is the result of a number of related factors: the *ad hoc* development of tribunals, the changes brought about by the Tribunals, Courts and Enforcement Act 2007 and constitutional reforms under the Constitutional Reform Act 2005. These developments occurred as the devolution settlement expanded, adding an additional layer of complexity.
- 8.2 A transparent and consistent framework for complaints and judicial discipline seems to us to be a desirable feature of a reformed system of devolved tribunals. The approach to discipline in particular raises questions of separation (both from government, which should not be able to “punish” judges for decisions it does not like) and from other judges (who might be perceived as overly sympathetic to fellow judges).

### Complaints and disciplinary powers in the UK tribunal system

- 8.3 Schedule 14 to the Constitutional Reform Act 2005 contains a list of judicial office holders appointed by the Lord Chancellor. Complaints about those office holders must be made to the Judicial Conduct Investigations Office (the “JCIO”), the body which supports the Lord Chancellor and the Lord Chief Justice in their joint responsibility for judicial discipline. There is however an exception to this rule.
- 8.4 At present, complaints about a “tribunal member” (listed in the Judicial Conduct (Tribunals) Rules 2014) are dealt with by the “relevant President”. A schedule to the 2014 Rules gives a list of tribunal members and relevant Presidents. The 2014 Rules set out the process, (similar to that employed by the JCIO) that the relevant president must follow. A consultation has recently been launched by the Lord Chancellor and Lord Chief Justice of England and Wales on proposals to change this system, so that complaints about tribunal members are considered by the JCIO instead.

## Disciplinary and dismissal powers

- 8.5 The Lord Chancellor and (in England and Wales) the Lord Chief Justice are jointly responsible for the dismissal and discipline of judicial office holders listed in Schedule 14 to the Constitutional Reform Act 2005. The Lord Chancellor can remove a person from office, so long as prescribed procedures are followed. The Lord Chief Justice may, with the agreement of the Lord Chancellor, offer formal advice, or a formal written warning or reprimand. The Lord Chief Justice may also suspend a person, if they are subject to criminal proceedings or have been convicted of a criminal offence.

## Complaints processes within the devolved tribunals in Wales

- 8.6 The devolved tribunals in Wales receive very few complaints. For 2020/21, the section 59 tribunals received only eight complaints (one to the Welsh Language Tribunal, four to the Special Educational Needs Tribunal for Wales, now the Education Tribunal for Wales, and three to the Mental Health Review Tribunal for Wales).
- 8.7 The UK framework outlined above applies to some of the devolved tribunals. Some members of the devolved tribunals are listed as “tribunal members” in the 2014 Rules. Some other members of the devolved tribunals in Wales are not listed as “tribunal members” in those Rules, but are listed in Schedule 14 to the Constitutional Reform Act 2005 as “office holders”. A number of members of the devolved tribunals are not listed as either “tribunal members” or “office holders”.
- 8.8 Not all of these tribunals have complaints processes, and those that exist differ. We recommend that there should be one complaints policy which applies to chambers of the First-tier Tribunal for Wales and Appeal Tribunal; this could contain variations for individual chambers where necessary (Recommendation 38). We recommend that it should be published online, with printed copies available on request (Recommendation 39).

## Disciplinary process

- 8.9 As well as having a uniform complaints policy, we also recommend that the process of investigating a complaint should be uniform across the devolved tribunals, including in relation to complaints about administration of the tribunals (Recommendation 49) and complaints about the conduct of members (Recommendation 50). We consider that there should be consistency in relation to (a) the disciplinary processes that apply to members of the devolved tribunals and (b) who exercises the power to discipline and, ultimately, to dismiss members and judicial leads.
- 8.10 In relation to disciplinary processes, our provisional view in the Consultation Paper was that the 2014 Rules provide a useful model which could be adopted as uniform practice across the devolved tribunals. We therefore proposed that complaints regarding members of the devolved tribunals should be investigated by the judicial lead. However, the recent consultation launched by the Lord Chancellor and Lord Chief Justice proposes that complaints about members of the existing First-tier Tribunal should be investigated by the JCIO. This proposal aims to reduce the workload of tribunal Presidents, reduce the risk of conflict between the pastoral and leadership role of the Presidents and their disciplinary responsibilities, and make the rules simpler.

- 8.11 In our view the first problem is less evident in the devolved tribunals, where there are few complaints. Any conflicts can be dealt with by the ability to designate a different chamber president to investigate a complaint. The complexity of the current rules, with the 2014 Rules being overlaid upon Regulations made under the 2005 Act, could be avoided by simpler drafting specific to devolved tribunals.
- 8.12 We therefore recommend that complaints regarding members of the devolved tribunals should be investigated by the relevant Chamber President (Recommendation 42). Complaints regarding Chamber Presidents or Deputies, or members of the Appeal Tribunal for Wales, should be investigated by the JCIO or an equivalent body (Recommendations 43 and 44). We appreciate that the Welsh Government may want to review this recommendation in the light of responses to the ongoing consultation.
- 8.13 Our Consultation Paper explored in more detail what the disciplinary processes, if any, should be in place for members of school admission appeals panels. For the reasons discussed above, we do not make comprehensive recommendations about school admission appeals panels in the Report. But we recommend that the School Admissions Appeal Code should contain provision for complaints about the conduct of panel members (Recommendation 50).

### **Disciplinary powers**

- 8.14 The Lord Chief Justice and Lord Chancellor exercise disciplinary powers over members of the devolved tribunals listed in Schedule 14 to the Constitutional Reform Act 2005. However, as outlined above, that list is not exhaustive. Disciplinary powers in respect of the Valuation Tribunal for Wales and the Welsh Language Tribunal are conferred on the Welsh Ministers in the legislation which governs those tribunals. For other tribunals, however, the position is less clear. In particular, we have been unable to identify powers of dismissal in respect of the Adjudication Panel for Wales or school admission and exclusion appeal panels.
- 8.15 We recommend that the President of Welsh Tribunals should have the power to discipline and dismiss members of the First-tier Tribunal for Wales (Recommendation 45), including members of the Valuation Chamber (Recommendation 46). We recommend that Chamber Presidents and Deputy Presidents (including those of the Valuation Chamber) should be dismissed only by the President of Welsh Tribunals, with the concurrence of the Welsh Ministers (Recommendations 47 and 48).
- 8.16 We did not consult on the discipline of judges of the Appeal Tribunal for Wales, as the creation of this tribunal was only one option discussed in our Consultation Paper. Because of the seriousness of dismissing a judge of this seniority, we recommend in the Report that this should only be done by the First Minister. We recommend that sanctions short of dismissal should be implemented by the First Minister, with the concurrence of the President of Welsh Tribunals (Recommendation 49).
- 8.17 It is a fundamental aspect of the rule of law that judges cannot be disciplined on political grounds. Any involvement of the Welsh Ministers raises concerns about independence of the judiciary. Our view is that these concerns can be alleviated by requiring in some cases the concurrence of the President of Welsh Tribunals. They would also be addressed by imposing on the Welsh Ministers a statutory duty to respect judicial independence (discussed further below in Chapter 10).

## CHAPTER 9: TRIBUNALS ADMINISTRATION

- 9.1 The Welsh Tribunals Unit is the part of the Welsh Government that administers the section 59 tribunals. Unlike other bodies which administer tribunals in the UK, it is not structurally independent from the Welsh Government, leading some to question whether it is sufficiently independent. By contrast, the Valuation Tribunal for Wales is responsible for its own administration. This Chapter considers other models that have been adopted in the UK for the administration of tribunals, and makes a recommendation.

### **The executive agency model: Her Majesty's Courts and Tribunals Service and the Northern Ireland Courts and Tribunals Service**

- 9.2 Executive agencies are units of a central government department which are administratively separate, but which legally remain part of the department. A Guide issued by the Cabinet Office explains that they are usually set up

to allow the delivery of executive functions of government to be carried out separately from – but within a policy and resources framework set by – a primarily policy-focussed department.

- 9.3 Executive agencies are usually led by a Chief Executive, who is accountable to the relevant departmental Minister for delivery and day-to-day activities. Staff of executive agencies are civil servants. The executive agency model has been adopted for both Her Majesty's Courts and Tribunals Service and the Northern Ireland Courts and Tribunals Service.

### **The non-ministerial department model: the Scottish Courts and Tribunals Service**

- 9.4 SCTS was created in 2015, with the merger of the Scottish Courts Service and Scottish Tribunals Service. It is a non-ministerial department, established by statute. It has a Board and a Chief Executive.
- 9.5 The SCTS Board includes both judicial and non-judicial members. The judicial members drawn from the tribunals system are the President of Scottish Tribunals, and a Chamber President from the First-tier Tribunal for Scotland. The members of the Board are responsible for the leadership and direction of the organisation, and ensuring it meets the aims and objectives agreed between the SCTS and the Scottish Ministers.

### **Reforming the Welsh Tribunals Unit**

- 9.6 We believe that the Welsh Tribunals Unit should have greater structural independence from the Welsh Government. Whether it were restructured as an executive agency or a non-ministerial department, such reform would provide the following benefits.
- (1) It would embed the principle of judicial independence into the system, and provide reassurance to tribunal users that the running of the tribunals takes place at a distance from the decisions against which they are appealing.
  - (2) It would increase the public profile of tribunal administration, and make its activities more transparent to the general public. Currently the Welsh Tribunals Unit's budget is reported in the President of Welsh Tribunals' annual report, but

it has a very limited other public presence (for example, it does not have its own website).

- (3) It would allow the judiciary a role in the running of the Welsh Tribunals Unit. In particular either model would give a role to the President of Welsh Tribunals.

9.7 While we think either model could provide these benefits, we are drawn to the non-ministerial department model, because of the greater independence it gives from the Welsh Government. We therefore recommend that the Welsh Tribunals Unit should be restructured into a non-ministerial department (Recommendation 51). We suggest some principles which could be adopted when deciding who should be on the board of such a department.

## **CHAPTER 10: JUDICIAL INDEPENDENCE**

10.1 In order to perform their role, judges need to be independent, both from government and from other influences. This enables judges to make impartial decisions, which in turn allows users of tribunals to put their faith in the judicial system.

10.2 Judicial independence is explicitly included within the terms of reference of this project. It is particularly relevant to a number of topics which are considered in other chapters; appointments and discipline (Chapters 7 and 8) and the structure of the Welsh Tribunals Unit (tribunals administration).

### **A statutory guarantee of independence**

10.3 The Constitutional Reform Act 2005 made significant changes to the legal system in the UK. One of the principles underpinning these changes was that the judiciary should be independent. Section 3(1) of the Act provides that:

The Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary.

10.4 Section 3(5) also prevents the Chancellor and Ministers of the Crown from seeking to “influence particular judicial decisions through any special access to the judiciary”.

10.5 The Tribunals, Courts and Enforcement Act 2007 extended the guarantee to chamber presidents and vice-presidents and members of the First-tier and Upper Tribunals. It also applies to the President, Vice-President and members of the Valuation Tribunal for England.

10.6 Its application to the devolved tribunals in Wales is, however, inconsistent. It applies only to those members of the devolved tribunals who are listed in Schedule 14 to the Constitutional Reform Act 2005. As explained in Chapters 7 and 8, this list is incomplete in respect of the devolved tribunals. We recommend that Welsh Ministers and others responsible for the administration of justice in Wales should be subject to a statutory duty to uphold the independence of the devolved tribunals (Recommendation 52).

## The judicial oath

- 10.7 Judges in the UK are required to take the “judicial oath”. This is in fact two separate oaths or affirmations: the oath of allegiance and the judicial oath. Taking the oath represents an individual commitment to the principle of impartial decision-making.
- 10.8 Following the enactment of the Tribunals, Courts and Enforcement Act 2007, members, judges and judicial leads of the First-tier Tribunal and Upper Tribunal must take the judicial oath. In Scotland, all members and judicial leads of tribunals are considered part of the judiciary and are also required to take the oath.
- 10.9 In Wales, the President of Welsh Tribunals is also required to take the judicial oath before the Lord Chief Justice. But there is no statutory requirement for either judicial leads or members of devolved tribunals to take the oath (though in practice, some may have taken it as part of their appointment to other judicial offices). We recommend that all members of the First-tier Tribunal for Wales (including Chamber Presidents and Deputy Presidents) and members of the Appeal Tribunal for Wales should be required to take a judicial oath or affirmation (Recommendation 53).

# Recommendations

## CHAPTER 3: A TRIBUNALS SYSTEM FOR WALES

### Recommendation 1

We recommend that the tribunals listed in section 59 of the Wales Act 2017 should be replaced by a single First-tier Tribunal for Wales, which may then be subdivided into chambers.

### Recommendation 2

We recommend that chambers of the First-tier Tribunal for Wales should be led by chamber Presidents, supported by Deputy Presidents where necessary.

### Recommendation 3.

We recommend that the Welsh Ministers should be empowered to subdivide the First-tier Tribunal for Wales into chambers, and to allocate work to those chambers, by way of secondary legislation made with the concurrence of the President of Welsh Tribunals.

### Recommendation 4.

We recommend that the jurisdictions of the Valuation Tribunal for Wales should be transferred to a new Valuation Chamber of the First-tier Tribunal for Wales.

### Recommendation 5.

We recommend that school exclusion appeals should be transferred to the Education Chamber of a First-tier Tribunal for Wales.

### Recommendation 6.

We recommend that school admission appeal panels in Wales should continue to be administered by admission authorities.

### Recommendation 7.

We recommend that social care appeal panels should continue to be administered by Social Care Wales.

### Recommendation 8.

We recommend that the Welsh Ministers exercise their power to create chambers of the First-tier Tribunal for Wales so as to form an Education Chamber to exercise the jurisdictions of the Registered School Inspectors Appeal Tribunal, the Registered Nursery Education Inspectors Appeal Tribunal and the Education Tribunal for Wales.

### Recommendation 9.

We recommend that the Welsh Ministers exercise their power to create chambers of the First-tier Tribunal for Wales so as to form a Property Chamber of the First-tier Tribunal for

Wales to exercise the jurisdictions of the Agricultural Land Tribunal for Wales and Residential Property Tribunal for Wales.

**Recommendation 10.**

We recommend that the Welsh Government should keep the organisation of chambers of First-tier Tribunal for Wales, including the possible creation of a General Regulatory Chamber, under review as new tribunal jurisdictions are created.

**CHAPTER 4: APPEALS**

**Recommendation 11.**

We recommend that legislation should create an Appeal Tribunal for Wales.

**Recommendation 12.**

We recommend that the Welsh Ministers should have power by statutory instrument to establish chambers of the Appeal Tribunal and to transfer appellate jurisdiction to it.

**Recommendation 13.**

We recommend that the Appeal Tribunal for Wales should, in the absence of positive reason for different provision, be the appeal venue for appeals from the First-tier Tribunal for Wales.

**Recommendation 14.**

We recommend that appeals from rent assessment committees should require permission.

**Recommendation 15.**

We recommend that appeals from school admission appeals panels should be available on a point of law to the Education Chamber of the First-tier Tribunal for Wales.

**Recommendation 16.**

We recommend that onward appeals from decisions of the Education Chamber on appeals from school admission appeals panels should be limited to cases which raise some important point of principle or practice, or where there is some other compelling reason to hear the appeal.

**CHAPTER 5: THE PRESIDENT OF WELSH TRIBUNALS**

**Recommendation 17.**

We recommend that the President of Welsh Tribunals should be a judge of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. Provision for the President of Welsh Tribunals to sit should be made in procedural rules or directions.

**Recommendation 18.**

We recommend that the President of Welsh Tribunals should be the presiding judge of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales.

### **Recommendation 19.**

We recommend that the Welsh Government should consult with the President of Welsh Tribunals on the School Admissions Appeal Code pursuant to section 85(2) of the School Standards and Framework Act 1998.

### **Recommendation 20.**

If the Valuation Tribunal for Wales remains outside the unified system of tribunals, it should nonetheless be subject to the supervision of the President of Welsh Tribunals.

## **CHAPTER 6: PROCEDURAL RULES**

### **Recommendation 21.**

We recommend that there should be a Tribunal Procedure Committee for Wales.

### **Recommendation 22.**

We recommend that the Tribunal Procedure Committee for Wales should be able to establish sub-groups to focus on particular areas of work.

### **Recommendation 23.**

We recommend that the President of Welsh Tribunals should be responsible for chairing the Tribunal Procedure Committee for Wales and appointing its members.

### **Recommendation 24.**

We recommend that the President of Welsh Tribunals, when appointing members of a Tribunal Procedure Committee for Wales, should have regard to factors set out in legislation, including the need for:

- (1) the interests of each Chamber of the First-tier Tribunal for Wales and, in due course, the Appeal Tribunal for Wales to be represented;
- (2) the Committee to have access to persons with relevant expertise; and
- (3) the Committee to include persons who have experience of appearing in front of the tribunal or advising those that do.

### **Recommendation 25.**

We recommend that the rules be made by the President of Welsh Tribunals, in a form agreed by a majority of the Tribunal Procedure Committee, subject to their being approved by the Welsh Ministers.

### **Recommendation 26.**

We recommend that the Tribunal Procedure Committee for Wales should consult with whomever it considers appropriate (including members of the tribunal, members of the broader judiciary, practitioners and tribunal users) before making the rules.

### **Recommendation 27.**

The Tribunal Procedure Committee for Wales should adopt common procedural rules across the tribunals as far as is appropriate.

### **Recommendation 28.**

There should be a set of procedural rules for each chamber of the First-tier Tribunal for Wales and for the Appeal Tribunal for Wales. If the Appeal Tribunal for Wales is divided into chambers, the Tribunal Procedure Committee for Wales should consider whether to make a separate set of rules for each chamber.

### **Recommendation 29.**

We recommend that the Tribunal Procedure Committee for Wales should be required by legislation to have regard to the desirability of consistency within the procedural rules of the devolved tribunals and between them and those of other courts and tribunals in the UK.

### **Recommendation 30.**

The procedural rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should include:

- (1) an overriding objective;
- (2) a duty of the parties to cooperate with each other and the tribunal;
- (3) provision for service of documents by electronic means;
- (4) a power for the First-tier Tribunal to review its own decisions; and
- (5) rules on remote hearings.

## **CHAPTER 7: APPOINTMENTS**

### **Recommendation 31.**

We recommend that members of the First-tier Tribunal for Wales should be appointed by the President of Welsh Tribunals.

### **Recommendation 32.**

We recommend that Presidents and any Deputy Presidents of the First-tier Tribunal for Wales should be appointed by the Welsh Ministers, with the agreement of the President of Welsh Tribunals.

### **Recommendation 33.**

We recommend that members of the Appeal Tribunal for Wales should be appointed by the Welsh Ministers, with the agreement of the President of Welsh Tribunals.

### **Recommendation 34.**

We recommend that members of the Valuation Tribunal for Wales should be appointed by the President of Welsh Tribunals.

### **Recommendation 35.**

We recommend that the President and any Deputy President of the Valuation Chamber of the First-tier Tribunal for Wales should be appointed by the Welsh Ministers, with the agreement of the President of Welsh Tribunals.

#### **Recommendation 36.**

We recommend that the Judicial Appointments Commission should select candidates for all appointments to the First-tier Tribunal for Wales and Appeal Tribunal for Wales.

#### **Recommendation 37.**

We recommend that the Judicial Appointments Commission should select candidates for all appointments to the Valuation Chamber of the First-tier Tribunal for Wales.

### **CHAPTER 8: COMPLAINTS AND DISCIPLINE**

#### **Recommendation 38.**

We recommend that a standard complaints policy should apply to all chambers of the First-tier Tribunal for Wales, allowing for variations for individual chambers where necessary.

#### **Recommendation 39.**

We recommend that the complaints policy applying to the First-tier Tribunal for Wales should be available both online and in hard copy on request.

#### **Recommendation 40.**

We recommend that there should be a uniform procedure for complaints about the administration of the Tribunals Service for Wales.

#### **Recommendation 41.**

We recommend that there should be a uniform procedure for complaints about the conduct of members, Presidents and Deputy Presidents of the First-tier Tribunal for Wales.

#### **Recommendation 42.**

We recommend that complaints about the conduct of tribunal members of the First-tier Tribunal for Wales are investigated by the relevant Chamber President.

#### **Recommendation 43.**

We recommend that complaints about the conduct of Chamber Presidents and Deputy Presidents of the First-tier Tribunal for Wales are investigated by the Judicial Conduct Investigations Office.

#### **Recommendation 44.**

We recommend that complaints about the conduct of members of the Appeal Tribunal for Wales are investigated by the Judicial Conduct Investigations Office.

#### **Recommendation 45.**

We recommend that the President of Welsh Tribunals should have the power to discipline and dismiss members of the First-tier Tribunal for Wales.

#### **Recommendation 46.**

We recommend that the President of Welsh Tribunals should have the power to discipline and dismiss members of the Valuation Chamber of the First-tier Tribunal for Wales.

#### **Recommendation 47.**

We recommend that the President of Welsh Tribunals should have the power to discipline and dismiss Presidents and Deputy Presidents of chambers of the First-tier Tribunal for Wales, with the concurrence of the Welsh Ministers.

#### **Recommendation 48.**

We recommend that the President of the Welsh Tribunals should have the power to discipline and dismiss the President of the Valuation Chamber of the First-tier Tribunal for Wales, with the concurrence of the Welsh Ministers.

#### **Recommendation 49.**

We recommend that the First Minister should have power to dismiss judges of the Appeal Tribunal for Wales. Sanctions falling short of dismissal should be imposed by the First Minister with the concurrence of the President of Welsh Tribunals.

#### **Recommendation 50.**

We recommend that the School Admissions Appeal Code should provide for complaints about the conduct of members of school admission appeal panels.

### **CHAPTER 9: TRIBUNALS ADMINISTRATION**

#### **Recommendation 51.**

We recommend the establishment of a Tribunals Service for Wales as a non-ministerial department.

### **CHAPTER 10: JUDICIAL INDEPENDENCE**

#### **Recommendation 52.**

We recommend that the Welsh Ministers and others responsible for the administration of justice in Wales should be subject to a statutory duty to uphold the independence of the devolved tribunals.

#### **Recommendation 53.**

We recommend that all members of the First-tier Tribunal for Wales (including Chamber Presidents and Deputy Presidents) and members of the Appeal Tribunal for Wales should be required to take a judicial oath or affirmation.