

A new tribunal system for Wales: white paper

Response to Consultation

Scope of our reforms

1. Do you agree with the tribunals we have identified as the devolved tribunals, as set out in paragraph 22?

Yes, those Tribunals listed at paragraph 22 would appear to be the relevant devolved tribunals within the meaning of the consultation.

2. Do you agree with the proposed structure of the unified tribunal system for Wales?

Yes.

3. Do you agree with the proposed structure for the tribunal membership in the unified tribunal system?

Yes.

4. Do you agree the jurisdictions of the Welsh Tribunals should be transferred to the First-tier tribunal for Wales?

Yes.

5. Do you agree that, in principle, the jurisdiction of the Valuation Tribunal for Wales should be transferred to the First-tier tribunal for Wales?

The current system and independence of the Valuation Tribunal for Wales is found to work well but subject to the various practical issues being resolved the Council supports the overall principle of creating a unified, coherent tribunal system and therefore – in principle - the jurisdiction of the Valuation Tribunal for Wales being transferred to the First-tier tribunal for Wales.

6. Do you agree that if the jurisdiction of the Valuation Tribunal for Wales is not transferred to the First-tier Tribunal for Wales, it should still be subject to the supervision of the President of Welsh Tribunals?

No. Given the Valuation Tribunal for Wales operates well as a standalone tribunal and given its current degree of uniformity with the Valuation Tribunal in England it is not considered that this would be helpful in and of itself.

7. Do you agree the jurisdiction of school exclusion appeal panels should be transferred to the First-tier Tribunal for Wales?

Yes. Given the significance of these decisions, the Council agrees they would benefit from being determined by a formal judicial process.

8. Do you agree the jurisdiction of school admission appeal panels should continue to be administered by admission authorities for the time being?

Yes. The manner in which admission authorities administer appeals through the use of independent panel members with the support of a legal clerk results in robust, consistent and independent decisions. Such appeals are frequent in nature meaning panel members remain current and familiar with the principles involved and have the support of an expert

legal clerk on matter of procedure and law when required as well as being able to impart their local knowledge.

9. Do you agree appeals from school admission appeals panels should be available on a point of law to the First-tier Tribunal for Wales?

Creating a no cost route of appeal to the tribunal would likely result in parents taking the view that they have “nothing to lose” by appealing a decision with which they are dissatisfied irrespective of whether the decision is “correct” or not, thereby potentially resulting in a large number of appeals that might not have merit. Such a number of appeals would be an un-resourced demand on not only on the education and legal teams within councils but also on the tribunal service itself. Whilst appeals would be limited to “points of law” experience suggests that whether a point of law is made out is often determined at a final hearings by which point resources are already expended.

The Council is therefore of the view that, in the absence of additional funding to meet the costs of attending tribunal hearings, Judicial Review remains a suitable and proportionate means of legal challenge. It provides sufficient safeguards against potentially unmeritorious appeals whilst still affording parents an appropriate remedy.

10. Do you agree with the initial chamber structure we propose for the First-tier Tribunal for Wales?

Yes.

11. Do you agree as a guiding principle disputes deriving from Welsh law should be heard in a Welsh judicial institution?

Yes.

12. Are there any particular types of dispute under devolved law which you believe lend themselves particularly well to being resolved by a tribunal?

As well as those identified within the White Paper, disputes relating Mobile Homes (Wales) Act 2013 (i.e appeals against compliance notices and appeals against decisions not to issue a site licence) would likely lend itself to the First-tier Tribunal for Wales given that they derive from Welsh law.

13. Do you agree there should be an Appeal Tribunal for Wales?

Yes.

14. Do you agree the Appeal Tribunal for Wales should be the appellate body for appeals from the First-tier Tribunal for Wales unless there are exceptional reasons requiring different provision to be made?

Yes.

15. Do you agree jurisdictions should be transferred to the Appeal Tribunal for Wales over time, and that they should be organised into chambers by subordinate legislation made by the Welsh Ministers with the concurrence of the President of Welsh Tribunals?

Yes.

16. Do you agree with the proposed statutory duty to uphold judicial independence applying to all those with responsibility for the administration of justice as that applies to the reformed tribunal system in Wales?

Yes.

17. Who do you think should be included on the list of those with responsibility for the administration of justice as it applies to the reformed tribunal system in Wales?

Those persons responsible for the administration of justice in Wales within the reformed tribunal system but not extending to users of the First-tier Tribunal for Wales.

18. Is there a need for all members of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales to take an oath or affirmation of their commitment to uphold judicial independence?

No, however given the historical and symbolic significance across the UK's justice systems and practical significance in terms of the perception of judicial independence this is supported.

19. Do you have views on the proposed formulation of the oath or affirmation, if one is adopted?

No.

20. Do you agree with the creation of a statutory body arms-length from Welsh Government to be responsible for the administration of the new tribunal system in Wales?

Yes.

21. Do you think the proposed statutory body should be constituted as a Welsh Government Sponsored Body, as a Non-Ministerial Department, or something else? Why?

The Council does not hold any strong views on the matter. Both proposed models appear to be appropriate.

22. Do you think the Chair of the Board of the statutory body should be a Welsh Ministers' appointment or the President of Welsh Tribunals ex officio?

The Council does not hold any views on the matter.

23. Do you have any other comments on arrangements for the administration of the new tribunal system at Table 1?

No.

24. Do you agree the President of Welsh Tribunals should be the presiding judge of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, able to sit as a judge in those tribunals?

Yes.

25. Do you agree with our proposals to enhance the office of President of Welsh Tribunals by conferring statutory duties, functions and powers on the office, as detailed in this white paper?

Yes.

26. Do you agree with our guiding principles for the appointment of members to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales?

Yes.

27. Do you agree with our proposals for the appointing authority for members of the new tribunals:

a) except for Chamber Presidents and Deputy Presidents, members of the First-tier Tribunal for Wales to be appointed by the President of Welsh Tribunals; and

b) Chamber Presidents and Deputy Presidents of the First-tier Tribunal for Wales and members of the Appeal Tribunal for Wales to be appointed by the Welsh Ministers with the concurrence of the President of Welsh Tribunals.

Yes.

28. Do you agree the President of Welsh Tribunals and the Welsh Ministers when making appointments to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should be required to have regard to the need to encourage diversity in the range of persons appointed?

Yes.

29. Do you agree eligibility criteria for appointment to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should enable the pool of candidates eligible for appointment to be drawn as widely as possible?

Yes.

30. Do you agree the Welsh Ministers should set terms and conditions of appointment of members of the new tribunal service?

Yes.

31. Do you agree to there continuing to be a system of cross-deployment for judicial, legal and non-legal members in the new tribunal system?

Yes.

32. Do you think the appointment processes for the President of Welsh Tribunals should change in any way as part of the proposed reforms set out in the white paper?

The Council does not hold any views on the matter.

33. Do you agree with our proposals for managing complaints and making disciplinary decisions about members of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales?

Yes.

34. Do you agree with the proposed investigatory role for an independent body or person? Who do you think that body or person should be?

Yes.

35. Do you agree with our proposals for the management of complaints about the administration of the new tribunal system?

36. Do you agree with the creation of a statutory committee with responsibility for developing Tribunal Procedure Rules, as detailed in paragraphs 173-177 and in Table 4?

Yes.

37. Do you agree with the proposed exercise of the power to make the tribunal procedural rules?

Yes.

38. Do you agree with the Tribunal Procedure Rules Committee developing common procedural rules across the new tribunal system whilst recognising and accommodating the unique characteristics of each jurisdiction?

Yes. It would be helpful for there to be provision for certain basic case management decisions to be made administratively without the need for formal application or referral to a Judge.

39. Do you agree with our proposal that the Tribunal Procedure Rules of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales should include the following matters:

- a) an overriding objective
- b) a duty of the parties to cooperate with each other and the tribunal
- c) provision for service of documents by electronic means;
- d) a power for the First-tier Tribunal for Wales to review its own decisions, and
- e) rules on remote hearings.

Yes.

40. Do you agree the operation of civil and administrative justice in Wales should be kept under review? And if so, how should this be done?

Yes.

41. We would like to know your views on the effects that our proposed reforms to devolved tribunals in Wales to create a unified, coherent tribunal system comprising of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales would have on the Welsh language, specifically:

- a) on opportunities for people to use Welsh and
- b) on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

42. Please also explain how you believe the proposed reforms could be formulated or changed so as to have:

- a) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and
- b) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

It is not considered that the proposed reforms will have any negative effect on the Welsh Language.