

7 September 2020

Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee

Dear Mr Antoniw

I set out below my answers to the additional questions asked of me by your letter of 22 July 2020

1. How should the Senedd scrutinise the administration of the Welsh Tribunals and devolved justice functions in Wales?

- I acknowledge, of course, that the manner in which the Senedd scrutinises the administration of the Welsh Tribunals and devolved justice functions in Wales is a matter, ultimately, for the Senedd. However, the Senedd has available to it the annual reports of each Tribunal, the annual report of PWT and it has the ability to invite PWT to appear before LJCC and/or any other Committee which is concerned with devolved justice functions. When I appeared before the Committee in July I was accompanied by the Head of WTU who supplemented my evidence where appropriate. I would certainly expect that PWT, accompanied by the head of WTU, will now appear annually before LJCC and, when necessary, any other committee of the Senedd.
- I note that the Equality Local Government and Communities Committee has recently produced a report upon the Impact of Covid-19. The report is wide-ranging and it includes a section on the impact of rule changes in the Mental Health Review Tribunal for Wales which were introduced, specifically, to meet the challenges which the pandemic might produce. I welcome the scrutiny of the Committee upon this issue but I note that the Committee took no evidence from PWT, the President of the Mental Health Review Tribunal, the head of WTU or the civil servants within WTU who are most familiar with the operation of the Tribunal. I would respectfully suggest that scrutiny of particular aspects of the work of tribunals as a whole and/or scrutiny of an individual tribunal necessarily involves taking evidence and/or obtaining views from those who are responsible for the operation of the tribunals or tribunal.

2. How might the Senedd engage with the Welsh Tribunals in the development of their role and the development of new administrative law?

- So far as I am aware there is no dialogue between the Senedd as an institution and the Welsh Tribunals relating to the role of the tribunals and the development of new administrative law. PWT, accompanied by the Head of WTU, meets the First Minister (who is accompanied by the Counsel General and senior civil servants) on an annual basis to discuss matters of mutual interest and/or concern and, as I have said, I would expect that PWT and the Head of WTU would appear annually before LJCC henceforth and before any other Committee when necessary.
- It is difficult to see other than a limited role for the Welsh Tribunals in the development of new administrative law. A core function of the tribunals is to apply law made by the legislature. However, I could envisage circumstances in which PWT and the lead judge of a particular tribunal might be consulted about the impact upon the tribunals generally, or individually, of a proposed new law.
- The scope and role of each tribunal is defined by legislation. Some of that legislation is made in Westminster; some is made by the Senedd. I would expect that if changes to the role of a particular tribunal were being considered by the Senedd, civil servants in the justice policy division would consult with PWT, the judicial lead of the particular tribunal and the head of WTU so as to test the principles underpinning the proposed change and to obtain an informed view as to the practical ramifications of the proposed change. My understanding is that this happens, to an extent, currently. The judicial lead of the Special Education Needs Tribunal is being consulted about proposed new legislation affecting the role of that tribunal.

3. What are the reasons for the 'significant overspend' in 2019-20 that was referred to in your second annual report?

- The Welsh Tribunals Unit budget has remained the same over the last few years, whereas tribunal cases and costs have increased. In recent years the tribunal budget has had to absorb a number of costs. Examples are pensions for legal members, payment of fees to the President of Welsh tribunals and the cost of the provision of e-judiciary for around 200 tribunal members.

The 2019/20 financial year highlighted a significant overspend which can be attributed to:

- increased case numbers and hearings days together with an increase in the number of complex cases
- vice president fees for RPT – this role was vacant role in 2018/19
- revised fee structure to ensure parity of fees across devolved tribunals and wider UK judiciary
- fees for two new legal members in ALT



- 2% SSRB pay increase as opposed to the forecast 1%
- 13% pension contribution increase for legal members
- Less vacancies as compared to previous years within the Welsh Tribunals Unit staffing structure

- Welsh Tribunals Unit have a system in place to regularly monitor spending and when it becomes apparent to WTU that additional resources are needed these additional needs are flagged to the Welsh Government finance division at the earliest opportunity.
- The work of the Tribunals is demand led and in consequence it is difficult to forecast expenditure precisely for any one year. Trends from previous years along with the impact of tribunal reform provide a guide but no more than that. Forecasting work for 2020/21 indicated a similar projected overspend for the tribunals as occurred in 2019/20 and that would suggest the need to review the baseline budget for the Unit. The full financial impact of COVID is not yet known for the tribunals.

4. What are your views on the level of data and information on spending and performance included in the annual reports for each tribunal?

- I am satisfied that the data provided in the annual reports for each tribunal provide a satisfactory level of detail about spending and performance. I have not been made aware during my tenure (or before that when I was performing the role of PWT voluntarily) of any concern about a lack of detail. However, if there are particular concerns about the level of detail provided in the reports I would welcome specific suggestions from the Committee about proposed improvements which I would then willingly discuss with the judicial leads of the tribunals. I would be happy to receive correspondence from the Chair of the Committee as the means of communicating the views of the Committee.

5. What further observations, if any, would you like to make regarding external input on the preparation of tribunal annual reports? [See paragraphs 97-98 of the meeting transcript].

- I can confirm that there is no external input into the preparation of the annual reports for each tribunal, if the phrase "external input" is taken to be a reference to any person or body other than the Head of WTU and/or her staff. Having reflected upon the issue I hold to the view which I expressed in the session before the Committee that judicial independence dictates that the report should contain the independent view of the judicial lead insofar as it consists of comment or opinion. Obviously, the purely factual content of the report e.g. number and/or types of case and expenditure is provided to the judicial lead by the head of WTU and/or her staff. My understanding is that all the factual and statistical information provided is thoroughly checked and that there is no need for an external audit to ensure its accuracy.



- I write the annual report of PWT. Purely factual material about the performance of the tribunal is provided to me by the head of WTU and her staff.

6. What further observations, if any, would you to make regarding the collection of specific Welsh data? [See paragraphs 120 and 128 of the meeting transcript].

- Most of the data about the justice function in Wales is collected by Her Majesty's Court and Tribunal Service. That is to be expected since in the main the justice function is not devolved. My understanding is that Wales is not treated as a separate country by HMCTS in the collection of this data save insofar as there may be data collected which is specific to the Wales Circuit.
- There is very little that I (or the head of WTU) can do about this since our sphere of influence relates to the devolved tribunals. It may be that if Welsh Government took up with the MOJ and/or HMCTS the way in which data was collected as it relates to Wales a different approach might be adopted which would "isolate" data about the justice function in Wales. If such a change was practicable it would, in my view, be a desirable reform.

Yours sincerely

SIR WYN WILLIAMS
LLYWYDD TRIBIWNLYSOEDD CYMRU/PRESIDENT OF WELSH TRIBUNALS