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Justice in Wales:

Principles, Progress and Next Steps

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Preface

This report is the first output from a new line of research by the Wales Governance Centre on justice in Wales. As well as important developments in the constitutional settlement in Wales, the focus of public debate has expanded in recent years to include areas of legal jurisdiction and justice. As the laws of England and of Wales continue to diverge, there is an important academic contribution to be made in understanding the implications for the justice system in Wales. This report is intended as one of a series of contributions that the Wales Governance Centre will be making in this field. We hope it will promote discussion and debate on the future of the justice system in Wales.

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About us

The Wales Governance Centre is a research centre that forms part of Cardiff University's School of Law and Politics undertaking innovative research into all aspects of the law, politics, government and political economy of Wales, as well the wider UK and European contexts of territorial governance. A key objective of the Centre is to facilitate and encourage informed public debate of key developments in Welsh governance not only through its research, but also through events and postgraduate teaching.

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Executive Summary

The UK Government has so far rejected proposals for a distinct or separate jurisdiction for Wales. It has, however, established a 'Justice in Wales' working group to consider the practical implications of a distinct body of law in Wales for the shared legal system of England and Wales. With the proposed move to a new model of reserved powers under the Wales Bill 2016, the administration of justice will require continuing reform to accommodate increasing divergence between the laws and policies of England and Wales.

This report sets out key principles which the 'Justice in Wales' working group should actively promote. As well as clarity and efficiency, these include collaboration, subsidiarity and accountability. Principles of access to justice, which take into account the distinct demographic, economic, social and linguistic factors in Wales, are vital for sustaining and improving the system. In this regard, the report provides a base-line for the UK Government's approach to the administration of justice in Wales.

The report maps key institutions of the England and Wales justice system. Presenting a broad spectrum of forms of decentralisation, it ranges across courts and tribunals, the judiciary, the Ministry of Justice and the Home Office and their associated public bodies, policing, probation and youth justice. It also considers the role of bodies that provide reform, scrutiny, and oversight of the justice system. Ad hoc and piecemeal institutional developments with gaps and overlaps in functions are revealed in the response of the justice system to devolution. There is too an evident democratic deficit regarding the oversight of the justice system in Wales.

The report highlights areas of good practice where there has been positive co-operation between the UK and Welsh Governments. Proceeding on the basis of current UK Government policy of no separate, or distinct, jurisdiction, the report makes clear that much more needs to be done by way of recognition of Wales and Welsh law within the shared legal system. The report makes a series of recommendations on the next steps for the administration of justice in Wales. These include:

- Creating a Ministry of Justice 'Welsh Centre of Expertise'.
- Establishing a Standing Commission on Justice in Wales.
- Establishing a fully operational High Court Office in Wales.
- Guaranteeing Welsh representation on justice institutions, including the UK Supreme Court.
- Publishing separate data and performance indicators on the administration of justice in Wales.

1. Introduction

Justice, it is officially declared, is not devolved to Wales.¹ This, however, is an over-simplification. The National Assembly for Wales and Welsh Government have legislated and introduced policies which have had significant impacts on the justice system, with the effect of increasing divergence between law and practice in Wales and law and practice in England. As the UK Government also note, ‘the Welsh Government plays an important role in supporting the delivery of justice services in Wales.’²

So far, efforts at accommodating diverging Welsh law, whether passed in Cardiff or in London, within the England and Wales legal system have been piecemeal and lacking in guiding principle. As the distinct body of law is increasing in Wales, the justice system is dragging further behind. The proposed move to a reserved powers model, and the potential implications of removing EU law obligations following Brexit, will aggravate this basic tension still further. The First Minister made his view clear in stating that the ‘justice system has given the appearance that Wales is some kind of addendum.’³ The Wales Bill 2016 provides an opportunity for fresh thinking and for greater clarity and coherence in this important field of public policy and administration. In particular, the Secretary of State for Wales has announced the establishment of a working group of officials with the remit to ‘provide clear and efficient administrative arrangements for justice in Wales’ in the light of the changing constitutional framework.⁴ This report is prompted by the establishment of the ‘Justice in Wales’ working group.

The ‘administration of justice’ is an overarching term which goes beyond courts and tribunals to include a wide range of personnel, structures and institutions which combine to ensure an effective system of justice that complies with the rule of law. In mapping the key justice institutions that operate in Wales, the report highlights the fact of ad hoc and piecemeal institutional developments that result in gaps and overlaps of functions and, moreover, a democratic deficit regarding the scrutiny of justice in Wales. The report identifies key principles that the working group should actively promote and makes a series of recommendations regarding the next steps for the administration of justice in Wales.

1 HM Government, *UK Government’s Evidence to the Commission on Devolution in Wales, Part II: The Welsh Devolution Settlement* (2013) 63.

2 HM Government, *Powers for a Purpose* (February 2015) [2.9.2].

3 Carwyn Jones AM, National Assembly for Wales Record of Proceedings, 15 June 2016, 17:45.

4 Justice in Wales Working Group: Terms of Reference (2016).

1.1 Backdrop

Since the National Assembly became a primary law-making legislature there are various examples of the justice system in Wales becoming evermore distinct from that in England. Moving to a new model of devolution under the Wales Bill 2016 will likely give greater scope for further divergence. Recognition given in the Bill to a body of Welsh law made by the National Assembly and Welsh Ministers underscores the potential for divergence. It must also be remembered, that there is a dual aspect to divergence as the law of England also diverges from that in Wales through England-only reforms by the UK Parliament and UK Government.⁵

The Lord Chief Justice has expressed concern about the lack of understanding of the importance of justice for society, democracy, accountability, business and economy in Wales.⁶ To this effect, there is seen to be a hole in the heart of the system of justice in Wales:

No one has really studied the problem of what has happened under the [Government of Wales] Act and there is no justice function that looks after Wales. By default the courts have put one in place, but there is not a justice function. The Welsh Government do not have justice as a competence and the Ministry of Justice has only just realised, despite our pressing it, that there is a problem.⁷

The Lord Chief Justice has further argued that a ‘dedicated justice function’, either provided by the Ministry of Justice or devolved, is a matter of priority ‘to enable legislation to operate effectively.’⁸ The Law Society in Wales has also called for the development of ‘formal and permanent lines of engagement across the justice sector in Wales.’⁹

The political debate on a distinct or separate jurisdiction for Wales is ongoing. An inquiry by the National Assembly and consultation by the Welsh Government considered the matter soon after Wales received primary law-making powers.¹⁰ They both came to a similar conclusion regarding the need to enhance the legal identity of Wales within the England and Wales jurisdiction with the potential for a separate jurisdiction in the longer-term.¹¹ However, following the publication of the St David’s Day proposals and the subsequent Draft Wales Bill published in October 2015, both the National Assembly and the Welsh Government changed their positions regarding the immediacy of a distinct jurisdiction. As a result, the Welsh Government announced its support for a distinct Welsh jurisdiction whereby the existing shared jurisdiction of England and Wales would be divided as between the courts and laws of Wales and the courts and laws of England, but the judiciary and the administration of justice would remain shared for the immediate future. The Welsh Government elaborated this position in its own ‘Government and Laws in Wales Draft Bill’.¹²

The Wales Office has argued that there is no case at the moment for separating the single jurisdiction but that there is a need to consider the delivery of justice in Wales. Hence the suggestion of the ‘Justice in Wales’ working group of officials ‘to consider what distinct arrangements are required to recognise Wales’s needs within the England and Wales jurisdiction’ when a reserved powers model is introduced.¹³

5 See further, Public Administration and Constitutional Affairs Committee, *The Future of the Union, part one: English Votes for English Laws* (HC 2015-16, 523).

6 The Lord Chief Justice of England and Wales, ‘The State of Justice in Wales’ (Cardiff, November 2014).

7 House of Lords, Select Committee on the Constitution, *Evidence Session with the Lord Chief Justice of England and Wales* (Evidence Session No.1, 27 April 2016).

8 Judiciary of England and Wales, *The Lord Chief Justice’s Report 2015* (2016).

9 The Law Society, *Priorities for Justice in Wales: National Assembly for Wales Election 2016* (April 2016) 2.

10 National Assembly for Wales, Constitutional and Legislative Affairs Committee, *Inquiry into a Separate Welsh Jurisdiction* (December 2012); Welsh Government, *A Separate Legal Jurisdiction for Wales* (Consultation Document No.WG-15109, 27 March 2012).

11 National Assembly for Wales (n 10) 4; Welsh Government, *Evidence Submitted by the Welsh Government to the Commission on Devolution in Wales* (WG17658, 13 February 2013) 2, 24.

12 Welsh Government, *Government and Laws in Wales Draft Bill: Explanatory Summary* (No.3:WG28243, March 2016) 5, 19-20.

13 Wales Office, ‘Amended Wales Bill will deliver a stronger devolution settlement’ (Press Release, 29 February 2016).

Decentralisation of the England and Wales legal system is not only occurring in Wales. As part of its 'devolution deal', the Greater Manchester Combined Authority is expected to undertake responsibilities over criminal justice in partnership with central government departments. When considering the administrative arrangements suitable for justice in Wales, this wider development must also be borne in mind.

For the avoidance of doubt, this report proceeds on the basis of the UK Government having ruled out moving to a separate or distinct jurisdiction for Wales at this time. There has been much debate regarding more fundamental jurisdictional reform but the present report looks at the current position and considers what arrangements are required within the unified jurisdiction to respond to the emerging body of Welsh law.

1.2 Structure of the Report

What follows is divided into three main parts. The first part considers the principles that should underpin the policy development inside the shared England and Wales legal system and examines how the underpinning principles could be given effect through these arrangements. It also references the Welsh language as an overarching element of divergence between England and Wales. Designed to illuminate the different forms of decentralisation in practice, the second part of the report is a more detailed mapping of individual justice institutions that operate in Wales and outlines the forms of decentralisation which are already evident within that system. It ranges across courts and tribunals, the judiciary, the Ministry of Justice and the Home Office and their associated public bodies, policing, probation and youth justice, as well as various bodies tasked with reform, scrutiny and oversight. The final part of the report considers what further arrangements are now required by way of recognition of Wales and Welsh law within the shared legal system of England and Wales. As such, these next steps should be read as a base-line requirement in the UK Government's approach to constitutional and legal development in Wales.

2. Principles

Devolution across the UK has developed in an ad hoc and piecemeal fashion, an aspect that has rightly attracted much criticism. This has especially been the case in Wales where devolution has been through three short-lived settlements and could embark on its fourth under the Wales Bill. Conversely, in the words, of the House of Lords Constitution Committee, setting out a framework based on principles provides a ‘guide to future action within which any further demands for devolution can be considered in a coherent manner.’¹⁴

In the case of Wales, this type of principled approach had already been adopted by the Commission on Devolution in Wales (the Silk Commission) to evaluate the case for changes to the constitutional settlement. The Commission identified eight major principles that could be used: accountability, clarity, coherence, collaboration, efficiency, equity, stability, and subsidiarity. Those principles support the intention of maximising the potential for ‘good outcomes for the people of Wales’ and for the governance of Wales to ‘be done efficiently and collaboratively, regardless of how responsibilities might be distributed.’ This would be a contrast ‘to the reactive and piecemeal’ developments of the past.¹⁵ This is an even more pressing concern in the context of a fragmented and multi-layered justice system.

Clarity and efficiency have already been identified as key principles in the terms of reference of the ‘Justice in Wales’ working group.¹⁶ Any such group or commission on justice in Wales should also consider the other principles highlighted by Silk in order to guide its work in adapting the current shared justice system. Moreover, in the spirit of good governance, the new working group should actively promote collaboration¹⁷, so that the UK and Welsh Government ‘work constructively together’; subsidiarity, so that decisions are made as close as possible to the people they affect; and accountability, so that citizens know who to hold responsible.¹⁸

2.1 Access to Justice in Wales

The ‘Justice in Wales’ working group should bear in mind not only distinctive laws applicable in Wales but also distinctive social and demographic factors. Demographic statistics in Wales show an increasingly ageing population and decline in traditional industries, which has led to deprivation and poverty with striking differences between the wealthiest and poorest parts of Wales.¹⁹ These bring particular pressures on public services and on the economy in Wales. In turn, this can have implications for the delivery of justice policy in Wales and for accessibility of justice. Understanding the context of Welsh society is important to ensure appropriate processes and procedures for the administration of justice in Wales. These require different approaches to what is perceived to be suitable for the whole England and Wales justice system. For example, the Commission on the Future of Advice and Legal Support has highlighted particular issues regarding the sustainability of the Welsh legal services sector. It has also emphasised specific risks to legal services in rural areas due to cuts in funding and inadequate recruitment of younger professionals.²⁰

14 Select Committee on the Constitution, *The Union and Devolution* (HL 2015-16, 149) [160].

15 Commission on Devolution in Wales, *Empowerment and Responsibility: Legislative Powers to Strengthen Wales* (March 2014) [3.2.5], [3.3.2]-[3.3.4].

16 Justice in Wales Working Group: Terms of Reference (2016).

17 Building in turn on the general principles established by the Memorandum of Understanding and Devolution Guidance Notes between the UK Government and the devolved administrations. Cabinet Office, *Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee* (October 2013); Cabinet Office, ‘Devolution Guidance Notes’ <<https://www.gov.uk/government/publications/devolution-guidance-notes>>.

18 Silk Commission 2014 (n 15) [3.3.3].

19 The Wales We Want, ‘Our Population (Demographics)’ <<http://thewaleswewant.co.uk/sites/default/files/Demographics%20factsheet.pdf>>

20 The Low Commission, *Wales Manifesto for Advice* (2016) 5.

The cuts to legal aid have had major effects in Wales. One estimate calculates a loss of £4.1 million to advice funding from April 2013, with a £2.4 million reduction in legal aid and further cuts from the Welsh Government, local authorities, European funding and charities.²¹ In response to this, the framework of access to justice is already changing in Wales with distinct approaches adopted by the Welsh Government. One example is the establishment of the National Advice Network, which is a distinct Welsh forum that provides strategic leadership for not-for-profit advice bodies.

Basic principles of access to justice should not be lost in the constitutional debate. As the report of the Justice Stakeholder Group set up by the Welsh Government acknowledges, issues from the current devolution settlement and reforms in terms of digitalisation and court closures, for example, require consideration of the impact on ‘Wales-specific access to justice’.²² So too, administrative justice, in the sense of challenging public administration and decision-making, is a vital part of the picture; one which has received special attention in Wales. The Committee for Administrative Justice and Tribunals, Wales (CAJTW), stated that a ‘distinctive Welsh approach’ for administrative justice based on social justice ‘must rest on a clear set of principles.’²³ A 2015 report from Bangor University, commissioned by CAJTW, sets out 12 principles for administrative justice in Wales. Principles which may be relevant to the wider justice system more generally include: procedures that are accessible, independent, impartial, open and appropriate; procedures that work proportionately, efficiently and effectively; procedures that minimise disadvantage to unrepresented parties, ensure respect for human rights, equality, sustainability, and the protection of vulnerable groups; and procedures that ensure appropriate respect for the Welsh language.²⁴ Accessibility of the law, as recognised recently in the context of Wales by the Law Commission, should also be a key principle for access to justice and is central to the rule of law.²⁵ As Lord Bingham noted, this is vital for citizens to avoid criminal penalty, to claim legal rights or perform obligations, and, also, to promote trade, investment and business.²⁶

Inspiration can also be taken from other devolved administrations in the UK. The Access to Justice Review in Northern Ireland sets out guiding principles backed by the rule of law and an independent judiciary that include; fair and equal access to justice; protection of fundamental freedoms and human rights, with regard to Article 6 ECHR in particular; equality of arms; proportionality; incentivising early resolution of disputes and alternative dispute resolution; minimising delay; mixed model provision; high quality, efficient and independent legal profession; and value for money and budgetary management.²⁷

To underline the point, clarity and efficiency are important principles for the Justice in Wales working group to consider, but a more rounded approach is required, one in which a full set of guiding principles is articulated and promoted.

21 The Law Commission, *Tackling the Advice Deficit* (January 2014) [1.15].

22 Justice Stakeholder Group, *Law and Justice in Wales: Some Issues for the Next Assembly* (March 2016) [93].

23 The Committee for Administrative Justice and Tribunals, Wales, *Administrative Justice: A Cornerstone of Social Justice in Wales* (March 2016) 8.

24 S Nason, *Understanding Administrative Justice in Wales* (2015) 43 - 47.

25 The Law Commission, *Form and Accessibility of the Law Applicable in Wales* (Law Com No 366, June 2016) [1.14].

26 T Bingham, *The Rule of Law* (Allen Lane 2010) 37 – 38.

27 Access to Justice Review Northern Ireland, *The Report* (August 2011) 17 – 20.

2.2 The Welsh Language

There is a right, under section 22 of the Welsh Language Act 1993, for any person to use the Welsh language in any legal proceedings in Wales. This was supported by the principle that in ‘the administration of justice in Wales the English and Welsh languages should be treated on a basis of equality.’ The 1993 Act placed a duty on designated public authorities to prepare Welsh language schemes to show how they would give effect to the basis of equality in their services. This statutory right is a fundamental difference in the administration of justice between England and Wales.²⁸

Today, under the Welsh Language (Wales) Measure 2011, Welsh has an official status in Wales underpinned by the principle that it should not be treated less favourably than the English language. The Measure also establishes the role of the Welsh Language Commissioner and a new compliance regime involving standards on public authorities that will gradually replace the former language schemes under the 1993 Act.

Several legal institutions operate a voluntary language scheme under the terms of the 1993 Act. These include HM Courts and Tribunals Service (HMCTS), the Ministry of Justice, the Legal Aid Agency, and the Judicial Appointments Commission. There are also Practice Directions which relate to the use of Welsh language in the civil and criminal courts.²⁹ To assist with this there is a Welsh Language Unit based in Caernarfon, a liaison judge for the Welsh language and a Wales Training Committee of the Judicial College which monitors obligations under the 1993 Act. The Welsh Language Commissioner cannot impose standards under the terms of the 2011 Measure on agencies and bodies of the crown without the consent of the Secretary of State. However, certain justice institutions, namely devolved tribunals and Commissioners, and some England and Wales bodies, such as the Criminal Injuries Compensation Authority and the Youth Justice Board can be directly subject to the standards under the 2011 Measure.

The bilingual nature of the justice system in Wales should be considered as both a constitutional and access to justice principle. The constitutional aspect has been used as an argument in favour of the establishment of the National Offender Management Service directorate in Wales and as a consideration for the regionalisation of the Administrative Court in Wales.³⁰ The issue of bilingual accessibility has recently been emphasised by the Briggs review of civil courts structure.³¹ For institutional arrangements in Wales to be truly effective the working group must have at the forefront of their minds the right to use the Welsh language in the administration of justice and the principle of treating the Welsh language no less favourably than the English language.

28 Justice Stakeholder Group (n 22) [96].

29 The Criminal Procedural Rules (October 2015) Rule 3.26; ‘Practice Direction Relating to the Use of the Welsh Language in Cases in the Civil Courts in Wales’ <<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/welshpd>>

30 National Offenders Management Service, *Business Plan 2014-15* (April 2014) 17; Lord Justice May, *Justice Outside London* (2007) [62].

31 Lord Justice Briggs, *Civil Courts Structure Review: Final Report* (July 2016) [6.124]-[6.125]; Legal Aid Agency, *Welsh Language Scheme Report 2014/15* (2015) [4].

3. Progress

3.1 Forms of Decentralisation

To proceed simply in binary terms – whether or not the justice function is devolved - is not helpful. As this report shows, decentralisation can and does come in a variety of different forms. A careful mapping of where particular institutions stand in this regard reveals many gaps and oddities and provides the opportunity for different actors to consider their current arrangements and to learn from other models and experiences.

Ranging from almost complete centralisation to full legislative devolution, the existing arrangements are appropriately analysed in terms of a spectrum. At the one end, it may not mean any formal model of decentralisation but rather an ‘awareness of devolution in Wales and Welsh law’. This may increase to include intergovernmental mechanisms such as simple consultation, concordats and memoranda of understanding. More formal decentralisation occurs with establishing Welsh committees, appointments of Welsh representatives on central boards or appointing Welsh commissioners for particular organisations either voluntarily or through statutory requirement. A more advanced form of administrative decentralisation occurs with regionalisation, when an organisation establishes a directorate in Wales with a physical presence and a dedicated Welsh remit. At the far end, bodies such as Welsh tribunals or Welsh Commissioners may be the product of executive and/or legislative devolution.

In other words, it is important to recognise a range of models or options for decentralisation of justice functions in Wales. As well as helping to illuminate the ways in which devolution already operates, this is a precondition for properly resourced development in an informed and rational way.

The following table maps the different forms of decentralisation and devolution identified in the institutions discussed in this report. Two qualifications are in order, however. First, certain forms of decentralisation may not be relevant for all bodies. Indeed, there may be circumstances, supported by principles such as efficiency and coherence, when less decentralisation is the most appropriate option. Secondly, different forms of decentralisation may be identified in the same body. For example, the powers over devolved tribunals in Wales are fragmented. The National Assembly has competence to legislate for devolved tribunals but the executive functions for some of those tribunals may be retained by the Lord Chancellor.

Some institutions have actively embraced the opportunity to adapt to devolution. For others, our mapping exercise provides a menu of different decentralised arrangements which may be judged more or less appropriate in the particular situation. It should also assist the ‘Justice in Wales’ working group in outlining appropriate types of arrangements within the shared legal system.

Model	Arrangement	Example
Administrative Decentralisation	Awareness	UK Supreme Court
	Administrative Co-operation	Concordat or Memorandum of Understanding
	Regional / Local Networks	The Wales Youth Justice Advisory Panel
	Permanent Welsh Representative / Commissioner	Judicial Appointments Commission
	Non-statutory Advisory Board	Law Commission
	Statutory Advisory Board	
	Sub-committee for Wales	Civil Procedure Rule Committee
	Committee for Wales	Wales Training Committee of the Judicial College
	Distinct Commissioning or Service Level Agreements for Wales	NOMS in Wales and National Probation Service in Wales
	Regionalisation	The Administrative Court in Wales
	Welsh Directorate	NOMS in Wales
	Policy and funding from the Welsh Government in areas of justice but no formal power	Policing and Community Safety through funding Community Support Officers
Via Executive Devolution	Executive duties on Welsh Ministers related to justice	Police funding under the Local Government Finance Act 1988
	Transfer of executive functions for existing justice institutions	Some Devolved Tribunals Regulations and Appointments
	Direct Commissioning or Service-Level Agreements with the Welsh Government	Working Agreement with the Judicial Appointments Commission
Via Legislative Devolution	Legislative powers to amend and reform existing legal institutions	Special Educational Needs Tribunal for Wales
	Legislative powers to establish new justice institutions	Administrative Tribunals and Welsh Commissioners
	Welsh Ministers functions created through devolved legislation	Functions over the Welsh Language Tribunal

3.2 Courts

Supreme Court

There is a statutory requirement that there are judges appointed to the Supreme Court who have knowledge and experience of practice in the law ‘of each part of the United Kingdom.’³² However, there is no designated member of the Supreme Court from Wales. Provision is instead made for inviting a senior judge with knowledge of Welsh law to sit on Welsh cases as occurred in the Asbestos Diseases case, where the Lord Chief Justice, Lord Thomas of Cwmgiedd, delivered the minority judgment.³³ The President of the Supreme Court, Lord Neuberger, has expressed the view that there is an insufficient body of Welsh law to justify such an appointment but has also recognised that this is changing.³⁴ The Welsh Government has called for the formal appointment of a Welsh member of the Supreme Court.³⁵ The UK Government agreed with this in its St David’s Day announcement in 2015.³⁶

So far, the Supreme Court has only sat in London. However, Lord Neuberger has noted that there is no reason why it cannot sit outside London and could sit in Wales when appropriate.³⁷ It is evident from the Supreme Court’s Annual Report that it takes building relationships with devolved administrations seriously. Lord Hughes has started to hold meetings with the Counsel General for Wales and the Chief Executive has held meetings with the Wales Office, the Welsh Assembly Legal Team, and stakeholders in Wales over the last year.³⁸

Nevertheless, with continuing changes to the body of Welsh law the case for at least one judge ‘with particular knowledge and understanding of the distinct requirements of Wales’ is now clearly made out.³⁹ This is in part an issue of constitutional legitimacy of the Union State. The Bingham Centre for the Rule of Law recognise the constitutional significance of devolution appeals by suggesting that enlarged panels that consists of judges from each part of the UK, including Wales as the law increasingly diverges, should be considered.⁴⁰ But to ensure proper recognition of the significance and legitimacy of each part of the Union, representation with expertise of Welsh law should be an ordinary - permanent - part of the Supreme Court’s composition.

Senior Courts

The way in which the Senior Courts work has undergone some adaptation in the light of devolution. One of the earliest and high-profile reforms was to establish a Mercantile Court in Wales, a move which brought Wales into line with courts established in English regions. Further reforms have occurred in the High Court, most notably in the field of public law. The Administrative Court thus operates in Wales as well as, on a regional level in England. The Administrative Court in Wales has gone through three stages of decentralisation.

32 Constitutional Reform Act 2005, s.27(8): In making selections for the appointment of judges of the Court the commission must ensure that between them the judges will have knowledge of, and experience of practice in, the law of each part of the United Kingdom.

33 *Recovery of Medical Costs for Asbestos Diseases (Wales) Bill: Reference by the Counsel General for Wales* [2015] UKSC 3.

34 Lord Neuberger, ‘Speech to Legal Wales Conference’ (Bangor, October 2014).

35 Welsh Government (n 11) 25.

36 HM Government (n 2) [2.9.1].

37 Lord Neuberger (n 34) in response to question.

38 UKSC, *Annual Report and Accounts 2015-16* (HC 32 July 2016) 39, 41, 17.

39 HM Government (n 2) [2.9.1].

40 The Bingham Centre for the Rule of Law, *A Constitutional Crossroads: Ways Forward for the United Kingdom* (May 2015) [3.3].

The Administrative Court in Wales

The opportunity for certain Welsh public law cases to be heard in Wales has been possible since 1999.⁴¹ Although this allowed cases to be heard in Wales it was a modest level of decentralisation as documents were filed in Cardiff but managed in London. In effect, it was argued, that the arrangement was no more than a ‘post box’.⁴² Also, many claimants were still filing their claims outside Wales which led members of the judiciary to state that ‘such cases should be heard in Wales unless there were good reasons for their being heard elsewhere.’⁴³ The Justice Outside London report in 2007 recommended establishing an Administrative Court Office in Cardiff. This was part of a wider reform to decentralise the Administrative Court but the constitutional significance of Wales was a factor.⁴⁴ The Administrative Court Office (ACO) was created in Wales in 2009 and cases can be filed and heard in the Administrative Court for Wales in line with CPR Practice Direction 54D. The establishment of the ACO in Cardiff means that there is a proper system for lodging, listing and repatriating Welsh cases to Wales when appropriate.

Since April 2014 the Administrative Court Office (ACO) in Wales deals with appeals and applications to the newly formed Planning Court. The Office also manages the judicial review jurisdiction of the Upper Tribunal (Immigration and Asylum Chamber) in Wales.⁴⁵

The experience of the Administrative Court Office in Wales highlights the value of properly operational arrangements at sub-state level, most obviously in terms of access to justice and practical convenience for litigants.⁴⁶ The advantages of regionalisation have also been identified in other High Court jurisdictions, particularly in terms of waiting times; modernisation of facilities; and, especially noteworthy in the Welsh context, economically in terms of underpinning legal services in regional areas.⁴⁷ As well as the Practice Direction for the Administrative Court, there are some provisions in the Civil Procedure Rules and Practice Directions for allocating cases to regional centres and courts.⁴⁸ But these require strengthening so that the provisions that apply to the Administrative Court in Wales are extended to other jurisdictions of the High Court with a view to ensuring that more cases are lodged and heard in Wales or promptly repatriated to Wales. A fully operational High Court Office in Wales should be established to underpin and amplify these new arrangements; it would sit neatly alongside the Ministry of Justice ‘Welsh Centre of Expertise’ also recommended in this report. A protected, and ring-fenced, allocation of High Court judge sitting days in Wales to meet the needs of all jurisdictions of the High Court is another important element if Wales is to be properly served by the shared legal jurisdiction of England and Wales.

Both divisions of the Court of Appeal have made arrangements to sit in Wales. However, this is not based on principle. The Civil Division has decided to sit for a minimum of two weeks a year in Wales but there is no such commitment by the Criminal Division and there are no guarantees in either Division that appeals from Wales will be heard in Wales. Further, all cases are required to be lodged, administered and listed in London. As well as not fully recognising the constitutional position of Wales, there is also a practical inconsistency. In particular, in cases from Wales which are not heard in Wales there is no right to use the Welsh language.⁴⁹ This is especially relevant as Welsh legislation is

41 Practice Direction (Supreme Court: Devolution) [1999] 1 WLR 1592, Part III; Then incorporated into Practice Direction 54 in October 2000.

42 Public Law Wales & Standing Committee on Legal Wales, *Strengthening the Administrative Court in Wales* (October 2006) [36].

43 *R (Deepdock) v The Welsh Ministers* [2007] EWHC 3347 (Admin) [20] (Hickinbottom HHJ).

44 Lord Justice May, *Justice Outside London* (2007) [56].

45 S Nason & M Sunkin, ‘The Regionalisation of Judicial Review: Constitutional Authority, Access to Justice and Specialisation of Legal Services in Public Law’ (2013) 76(2) MLR 223, 239.

46 See generally, *David Gardner, Administrative Law and the Administrative Court in Wales* (UWP 2016).

47 Lord Justice Briggs, *Chancery Modernisation Review: Final Report* (December 2013) Chapter 10.

48 CPR 30.6 and for Multi-track Claims 29 PD 2.6A.

49 *Williams v Cowell* [1999] EWCA Civ 1893.

made bilingually and there may be a need to interpret both linguistic versions in the Court of Appeal. Proper respect should again be afforded to the constitutional position of Wales as one of the four countries of the Union. As a minimum, arrangements should be in place to ensure that both divisions of the Court of Appeal sit in Wales regularly. An office to support that development should also be established. The precedent established by the creation of the Administrative Court Office in Cardiff, and the principle that cases from Wales should be heard in Wales, serves as a valuable example of how this can also be achieved for the Court of Appeal.

With increasing divergence between the laws of England and of Wales the position of the Welsh Government from 2006 remains highly pertinent. In its evidence to the May review on Justice Outside London, it highlighted the need to strengthen the ACO in Cardiff, the High Court generally in Wales and arrangements for the Court of Appeal.⁵⁰ The first step has been achieved; the second and third steps now require action.

Civil Procedure Rule Committee

The Civil Procedure Rule Committee sets out rules of practice and procedure for the Civil Division of the Court of Appeal, the High Court and the County Court.⁵¹ Yet there has been an evident lack of communication between the UK and Welsh Governments, such that the Civil Procedure Rules have not been updated correctly.⁵² Recently, the Committee established a Welsh sub-committee to accommodate the implementation of the forthcoming significant changes to the law of landlord and tenant in Wales.⁵³

This approach could have wider application given that the Wales Bill 2016 confirms the ability of the National Assembly to legislate on the criminal law, other than for listed offences and exceptions. With that in mind, the Criminal Procedure Rule Committee could usefully follow a similar approach.

CAFCASS Cymru

CAFCASS Cymru is one of the only Wales-only agencies within the England and Wales court system. It was set up under the Children Act 2004 to safeguard and promote the welfare of children, advise the court, allow children to be represented and to provide information and support to children and their families. CAFCASS Cymru employs experienced child-care social workers and operates independently of courts, local authorities and all parties in relation to family proceedings. It becomes involved in a range of family proceedings where the child is 'ordinarily resident' in Wales such as divorced/separated parents in dispute over child arrangements, and adoption applications when local authorities apply for a Care or Supervision Order in respect of a child. It worked with over 7000 children in 2014-15.⁵⁴ It has 5 operational areas across Wales covering all 22 local authority areas.

Functions over child advisory services in the courts were devolved to the National Assembly under The Children Act 2004.⁵⁵ Structurally, it is now a part of the Welsh Government Health and Social Services Group and is accountable to the Cabinet Secretary for Communities and Children. This is a clear area where devolved responsibilities and justice overlap and the ability to combine justice and social care through formal devolution is an important model of reform in Wales.

50 Wales Assembly Government 'Administration of Justice in Wales' (25 October 2006) [5] <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Justice+Outside+London/appendix_f.pdf>

51 Civil Procedure Act 1997.

52 Law Commission (n 25) [1.48].

53 Lord Chief Justice (n 8) 26.

54 CAFCASS Cymru, *Annual Report 2014-15* (December 2015).

55 section 35-43. The Act makes provision for the transfer of CAFCASS (formerly England and Wales) property and staff to the Assembly as part of this function.

3.3 Tribunals

The historical development of tribunals in the UK was an ad-hoc and fragmented process and this is still reflected in the system today, especially when considering tribunals with jurisdiction in Wales. The main structure of tribunals in England and Wales was established under the Tribunals, Courts and Enforcement Act 2007 following the Leggatt Review of Tribunals in 2001.⁵⁶ The structure includes the First-tier Tribunal and an Upper Tribunal. Each tribunal consists of distinct chambers with its own jurisdiction. There are certain specialist tribunals outside this structure such as the Employment Tribunal.

‘Devolved tribunals’ in Scotland, Northern Ireland and Wales were outside the remit of the Leggatt Review. As a result, some tribunals in Wales are not within the main tribunal structure formed by the 2007 Act. Scotland and Northern Ireland have already managed, on the whole, to incorporate these tribunals into the justice system within their jurisdictions. However, due to the lack of a separate jurisdiction and devolved justice functions, the Welsh Government has faced particular challenges.

First-tier Tribunal

The First-tier Tribunal consists of seven chambers. The jurisdictions of each chamber may extend to different parts of the UK. Some extend to England-only, some to England and Wales, and some to the UK or GB as a whole. Important non-devolved areas which effect many people in Wales are within the powers of the First-tier Tribunal, particularly in terms of welfare law.

In some situations, such as the First-tier Tribunal (Mental Health), the First-tier Tribunal is an English-only tribunal and the corresponding jurisdiction for Wales is under the Mental Health Review Tribunal for Wales (MHRTW). Although the Mental Health Review Tribunal has operated a separate region for Wales, the MHRTW was transferred to be a devolved tribunal once the English jurisdiction was placed in the First-tier Tribunal.⁵⁷ This shows that it is not only Welsh law that can have implications on the single justice system but reform in England can have different implications in Wales as well.

In other examples, the First-tier Tribunal has functions over specific devolved matters. For instance, the Health, Education and Social Care Chamber and Care Standards Chamber have jurisdiction over specific devolved matters and so have jurisdiction over England and Wales. The First-tier Tribunal has also received further distinct powers over Wales. With the introduction of new devolved taxes, consideration needed to be given to where appeals against decisions should be directed. The options were to place them in current devolved tribunals, the First-tier Tribunal, or to create a new body for taxation appeals in Wales.⁵⁸ It was decided, with the agreement of Welsh Ministers, that jurisdiction for the Welsh taxes would be given to the Tax Chambers of the First-tier Tribunal and Upper Tribunal and the arrangement is to be underpinned by a Memorandum of Understanding. This seems to be contrary to the Welsh Government’s long-term aim of devolving justice but it notes that this is the best available option at the current time.⁵⁹ There is a patchwork of appeal routes for different administrative decisions which is likely to continue.⁶⁰

⁵⁶ Sir Andrew Leggatt, *Tribunals for Users: One System, One Service* (March 2001) see Chapter 11 regarding devolution.

⁵⁷ Mental Health Act 1983, section 65 as amended by Transfer of Tribunal Functions Order 2008, SI.2008/2833, Schedule 3, para.45.

⁵⁸ Nason (n 24) [7.28].

⁵⁹ Welsh Government, *Tax Collection and Management (Wales) Bill: Explanatory Memorandum* (Revised February 2016) [67], [75].

⁶⁰ Welsh Government, *Devolution, Democracy and Delivery: Powers to achieve our aspirations for Wales* (WG 22188, 2014) [79], The Welsh Government has expressed an interest in bringing forward primary legislation to reform and rationalise the structure of devolved tribunals in Wales but currently this does not seem likely.

Devolved Welsh Tribunals

A number of tribunals have jurisdictions which extend only to Wales.⁶¹ These have emerged through various ad hoc means.⁶² For example, the responsibilities for some tribunals were transferred as executive powers to the National Assembly for Wales, and subsequently to the Welsh Government, under the original Transfer of Functions Order 1999. Some tribunals have been created for Wales since 1999.⁶³ Other tribunals have operated at Welsh region or unit level prior to devolution and so powers for these were transferred to the Welsh Ministers when the corresponding English jurisdiction was passed to the First-tier Tribunal.⁶⁴ The National Assembly for Wales can also establish new tribunals for Wales. The Welsh Language Tribunal is the first example of this.⁶⁵

In line with the traditional ad-hoc development of tribunals across the UK, Welsh tribunals are organised and administered in at least four different models: administered by the Welsh Government through the Welsh Tribunals Unit,⁶⁶ sponsored by the Welsh Government,⁶⁷ contracted out to specialist bodies or charities,⁶⁸ or administered by local authorities.⁶⁹ There is not a clear transfer of powers as executive powers to make rules and regulations or appointments may still lie with the Lord Chancellor, rather than Welsh Ministers, for some tribunals.

Although there may be statutory duties on England and Wales justice bodies for some aspects of individual devolved tribunals, on the whole they sit outside the direct powers of bodies such as HMCTS, the Judicial Appointments Commission, the Judicial College, the Judicial Conduct Investigations Office, and the Tribunal Procedure Committee. As a result, there is a 'lack of clarity' and inconsistency regarding arrangements for appointments, training, conduct and discipline.⁷⁰ However, there has been co-operation between these institutions and the Welsh Government and so it could be said that a network of institutions collaborating together to manage administrative arrangements for some devolved tribunals is emerging.

Upper Tribunal

The Upper Tribunal (UT) consists of four appeal chambers. There are further cross-overs with devolved tribunals as the Upper Tribunal is the appeal route for many devolved tribunals, a feature which highlights the ad hoc and overlapping nature of parts of the justice system in Wales. For example, the Lands Chamber of the UT hears certain appeals from Residential Property Tribunal Wales and the Valuation Tribunal for Wales. Other appeals from Welsh Tribunals go to the Administrative Court.

It has been suggested that the Upper Tribunal is well suited to deal with appeals from devolved tribunals as it is used to working across jurisdictions and applying different laws and regulations. It

61 Adjudication Panel for Wales, the Agricultural Land Tribunal for Wales, Board of Medical Referees, Independent Review Mechanism for fostering and adoption, the Mental Health Review Tribunal for Wales, Registered Inspectors of Schools Appeal Tribunal, Registered Nursery Education Inspectors Appeal Tribunal, the Residential Property Tribunal Wales, School Admission Appeals Panels, School Exclusion Appeals Panels, the Special Educational Needs Tribunal for Wales, Valuation Tribunal for Wales and the Welsh Language Tribunal.

62 Administrative Justice and Tribunals Council: Welsh Committee, *Review of Tribunals Operating in Wales* (2010).

63 Special Educational Needs Tribunal for Wales, s.333 Education Act 1996 (as amended by Education Act 2002).

64 For example, the Mental Health Review Tribunal for Wales: Mental Health Act 1983, section 65 as amended by Transfer of Tribunal Functions Order 2008, SI.2008/2833, Schedule 3, para.45.

65 Welsh Language (Wales) Measure 2011.

66 See Welsh Tribunals Unit below.

67 Valuation Tribunal for Wales.

68 Independent Review Mechanism for fostering and adoption; the Board of Medical Referees.

69 School Admission Appeals Panels; School Exclusion Appeals Panels.

70 The Committee for Administrative Justice and Tribunals Wales, *Administrative Justice: A Cornerstone of Social Justice in Wales* (March 2016) 7.

also sits in Wales and can hear cases through the medium of Welsh.⁷¹ The Upper Tribunal (Immigration and Asylum Chamber) (UT(IAC)) is an example which enhances this point. It is the responsibility of the regional Administrative Court Offices, including the one in Cardiff, to process and administer the judicial review jurisdiction of the UT(IAC), while other matters are conducted from London. This illustrates how decentralisation is encouraged in some areas and that the ACO provides a regional structure to place further functions when appropriate.

Tribunal Procedure Committee

The Tribunal Procedure Committee has powers to make rules and procedures for the First-tier and Upper Tribunals. It does not have responsibilities over devolved tribunals. This means that there is a lack of an independent procedure committee to make rules and regulations for devolved tribunals in Wales.

It also means that there is a lack of coherence between procedures of devolved tribunals and the First-tier Tribunal. In *Clarise Properties Ltd v Rees*⁷² it was held that, as the relevant Order had been made under the Tribunals, Courts and Enforcement Act 2007 it only applied to decisions from the First-tier Tribunal and not to the corresponding devolved tribunal in Wales. As a result, the test was less onerous on appeals from Wales.

This highlights a specific, but notable, friction in the relationship between devolved and non-devolved tribunals. With distinctive Welsh matters being placed on the First-tier Tribunal regarding tax, the Tribunal Procedure Committee will need to consider what arrangements are appropriate to accommodate them. A sub-committee model, similar to the Civil Procedure Rule Committee, would seem appropriate. Consideration also needs to be given to establishing a Tribunal Procedure Committee for Wales to deal with devolved tribunals or whether a suitable adaptation through a sub-committee model could be appropriate to handle Wales-only tribunal procedures.

3.4 Judiciary

Linked in part to the new Wales circuit structure, several reforms have been made to the judiciary to respond to the changing constitutional arrangements.

Presiding Judges for Wales and Liaison Judges

The Presiding Judges for the Wales circuit are responsible for the deployment of the judiciary, allocation of cases and general supervision of judges on the circuit in terms of mentoring, career development and discipline.⁷³ There are also Liaison Judges for Wales for specific areas of practice such as the Family Division, the Administrative Court, and a Chancery Supervising Judge.⁷⁴

Senior President of Tribunals

The Senior President of Tribunals is the head of the tribunals judiciary and provides leadership to tribunal judges in the First-tier and Upper Tribunals and the Employment Tribunals. The remit of the Senior President can also include responsibility over the judiciary in reserved tribunals in Scotland and Northern Ireland. However, the role does not extend over the devolved tribunals in Wales.

There has been collaboration between the Senior President with the Lord Chief Justice and Welsh Government to make 'progress in governance, training and pastoral matters' for devolved tribunals.⁷⁵

71 David Williams 'A Separate Welsh Jurisdiction?' in National Assembly for Wales, *Inquiry into the Establishment of a Separate Welsh Jurisdiction: Consultation Responses* (March 2012) WJ12 [17], [20] – [21].

72 [2015] EWCA Civ 1118.

73 Courts and Tribunals Judiciary, 'Appointment of new Presiding Judges' (17 June 2013) <<https://www.judiciary.gov.uk/announcements/appointment-new-presiding-judges-17062013/>>

74 Courts and Tribunals Judiciary, 'Senior Judiciary' <<https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/senior-judiciary-list/>>

75 Senior President of Tribunals, *Annual Report 2015/16* (February 2016) 118.

Meanwhile, the Senior Tribunals Liaison Judge for Wales chairs the Welsh Tribunal Contact Group which brings together non-devolved and devolved tribunal judiciary in Wales.⁷⁶ The Committee for Administrative Justice and Tribunals in Wales (CAJTW) found that there were only limited issues of common interest between devolved and GB tribunals and the Group did not meet at all in 2015. Tribunals administered by the Welsh Tribunals Unit of the Welsh Government have now established their own forum of judicial leads of the devolved tribunals operated by the Welsh Government.⁷⁷ CAJTW hoped that this would be a step forward but it is a fragmented approach as it does not contain all devolved tribunals.

Judicial Office

The Judicial Office was established to provide support for the judiciary following the Constitutional Reform Act 2005. Its status is as an Office of the Ministry of Justice. It provides services to the judiciary in terms of welfare, human resources, communications, legal and policy advice.⁷⁸ The support of the Judicial Office does not extend to devolved tribunals in Wales. However, in terms of the current business plan published by the Office there is clear awareness and commitment towards supporting the judiciary in light of legislative changes in Wales.⁷⁹

CAJTW reported that there are good working relationships between the Welsh Government and the Judicial Office. In terms of administrative justice, this has facilitated support and engagement with other arm's length bodies, and provided access to the judicial portal and secure communication networks for members of devolved tribunals.⁸⁰ CAJTW has recommended establishing a formal working agreement between the Welsh Government and Judicial Office 'so that roles, responsibilities and relationships are clear in all cases'.⁸¹ The Welsh Government response indicates that work is in progress to develop such an agreement.⁸²

Research by Bangor University showed that there was a need for senior judicial leadership of the devolved tribunals in Wales and the need to develop an 'explicitly Welsh judiciary'.⁸³ It was suggested that this could be done by the Presiding Judge for Wales who could monitor Welsh cases in non-devolved courts and tribunals and foster co-operation between devolved and non-devolved aspects of administrative justice in particular. This role could provide a focal point for the current fragmented system and deal with specific Welsh issues that may occur with increasing divergence in the law.⁸⁴ This could also be a suitable response in terms of other principles such as accountability, efficiency, and subsidiarity. CAJTW accordingly recommended the appointment of a Welsh judge as a Senior Judicial Lead for devolved tribunals, an idea which the Welsh Government notes is currently under consideration.⁸⁵

There are several teams within the Judicial Private Offices to support judges on policy and jurisdictional issues and these have led work on judge-led reform in areas such as modernising family justice, and implementing civil justice reforms.⁸⁶ The Judicial Office could usefully establish a team to support reform in light of divergences between the laws of England and of Wales. This would complement the strategic objective of the Office of supporting the judiciary 'in its responsibilities for justice and

76 *ibid* 6-7.

77 CAJTW (n 70) [25].

78 Judicial Office, *Judicial Office Business Plan 2016-17*, 7.

79 *ibid* 15.

80 CAJTW (n 70) [27].

81 *ibid* [31].

82 Welsh Government, *Written Statement - Publication of the Legacy report of the Committee for Administrative Justice and Tribunals, Wales and the Welsh Government's response* (1 August 2016) Annex 2 <<http://gov.wales/about/cabinet/cabinetstatements/2016-new/cajtwlegacyreport/?lang=en>>

83 Nason (n 24) [7.21].

84 *ibid* [7.21].

85 CAJTW (n 70) [30]; Welsh Government (n 82).

86 Courts and Tribunals Judiciary, 'Judicial Support' <<https://www.judiciary.gov.uk/about-the-judiciary/training-support/jo-index/ajcfi/>>

constitutional matters’ and provide a stable legacy to the work of the current working group.⁸⁷ If the role of Presiding Judge for Wales is enhanced as suggested above, this Team could play a part in supporting that role.

Judicial College

The Judicial College was established in April 2011 to unify the training for courts and tribunal judicial office holders. It is governed by a Board which has responsibility for the overall strategy for the College, business plans and delivery of training. There is a member of the Board with responsibility for Wales. There is also a Wales Training Committee which monitors obligations under the Welsh Language Act 1993, provides communication about new legislation passed by the Welsh Government, and advises on the implications for judicial training.⁸⁸ According to CAJTW, the Board is responding to the increasing legislation made by the National Assembly ‘in order to identify the consequential training needs’ of the judiciary sitting in Wales.⁸⁹ This is also reflected in the College’s current strategy to ‘reflect the increasing impact’ of legislation by devolved legislatures.⁹⁰

The devolved Welsh tribunals are currently outside the responsibility of the Judicial College. However, the Welsh Government and the Judicial College have been working to ‘explore the options for quality training and implementation of appraisal arrangements which are cohesive, proportionate and cost effective.’⁹¹ The Judicial Office has also indicated an intention to assist devolved tribunals with training ‘where funded and requested’.⁹² Although CAJTW welcomed this development, it was concerned that devolved tribunals should not be ‘wholly reliant’ on the College as there should be a ‘Wales-based’ approach in collaboration with Welsh Law Schools. That could also be true for all judicial training which is required on specific Welsh law. Nevertheless, at present, the Judicial College will remain important in this regard and so it is worth reiterating the recommendations from CAJTW that the relationship between the devolved tribunals and the College need to be on a more formal footing to ensure clarity.⁹³ Following a recommendation from CAJTW, the Welsh Government has indicated that it is in the process of developing formal working arrangements with the Judicial College.⁹⁴

Judicial Appointments Commission

The establishment of the Judicial Appointments Commission (JAC) was a fundamental constitutional reform to secure the independence of the judiciary under the Constitutional Reform Act 2005. It has made some reforms to accommodate its work in Wales. In particular, when selecting Commissioners the selection panel must select at least one lay member ‘who appears to the panel to have special knowledge of Wales.’⁹⁵

In terms of JAC’s duties for making judicial appointments, it has set the objective of ensuring particular requirements relating to Wales are provided for in the selection process of appointments in Wales.⁹⁶ One way it does this is by asking additional questions in selection interviews and presentations to assess candidates’ ‘understanding, or the ability to acquire the understanding, of the administration of justice in Wales, including legislation applicable to Wales and Welsh devolution arrangements.’ Some posts may also have requirements, or desired requirements, regarding Welsh language competence.

87 Judicial Office (n 78) 8.

88 Courts and Tribunals Judiciary, ‘Judicial College: Governance’ <<https://www.judiciary.gov.uk/about-the-judiciary/training-support/judicial-college/governance/>>

89 CAJTW (n 70) [28].

90 Judicial College, *Strategy of the Judicial College 2015-17* (January 2015) [29].

91 Senior President of Tribunals (n 75) 119.

92 Judicial Office (n 78) 17.

93 CAJTW (n 70) [28].

94 CAJTW (n 70) [31]; Welsh Government (n 82).

95 The Judicial Appointments Commission Regulations 2013, SI.2013/2191, Reg. 15(4).

96 Judicial Appointments Commission, *Business Plan 2015/16* (May 2015) 3.

Appointments to Welsh Devolved Tribunals

There have been concerns regarding the independence of the appointment process for devolved tribunals.⁹⁷ The Lord Chancellor has retained powers to make judicial appointments for many of these tribunals and so the JAC has direct responsibility.⁹⁸ Where the Welsh Ministers have appointment powers, the Welsh Government has commissioned or worked with JAC to undertake selection processes.

There has been a formal working arrangement between the Welsh Government and JAC to undertake the selection process for Welsh Ministers' appointments to the devolved tribunals since April 2015. So far, this has included appointments for the Adjudication Panel for Wales (APW) and the Special Educational Needs Tribunal for Wales (SENTW), which are not statutorily within JAC's remit.⁹⁹

Alternatively, the appointment of the President of the Welsh Language Tribunal was a novel procedure. This appointment was made by the Welsh Ministers under The Welsh Language Tribunal (Appointment) Regulations 2013. In practice, they appointed an independent panel which included a senior Welsh judge, a member of JAC, and an independent assessor. Following consultation with the Lord Chief Justice and Chair of the Judges' Council Committee for Wales a recommendation was made to the Welsh Ministers.¹⁰⁰ This was a new and unique Welsh procedure which sought to safeguard the principle of judicial independence to the Welsh judicial appointment process.

The proposal for establishing a Welsh JAC, or a Welsh Committee of the JAC, is not new. However, the appointment of the Welsh Language Tribunal President and appointments to the APW and SENTW have shown that it is possible to have a Welsh process which is distinctive and coherent in collaboration with the JAC. The JAC and Welsh Government should continue to work together to ensure that a coherent and independent appointments process exists and continues to develop Wales specific procedures.

Advisory Bodies

There are a number of advisory bodies with different memberships who are established to advise the judiciary. Many of the Lord Chief Justice's main responsibilities are assisted by the Judicial Office and the Judicial Executive Board. More generally, the Judges' Council provides support and advice to the Lord Chief Justice and, in particular, exercises statutory duties in the appointment of members of the Judicial Appointments Commission. It is also consulted on the views of the wider judiciary, provides detailed analysis and develops policy. The Presiding Judge for Wales is a representative member of the Council.¹⁰¹ There is a Welsh Committee of the Judges' Council which provides advice regarding the administration of justice in Wales.

97 Elizabeth Arfon-Jones, 'The Tribunal System in Wales: Map and Update on Jurisdictions' (Public Law Project Conference, Cardiff, April 2012).

98 Constitutional Reform Act 2005, Schedule 14 Part 3. The President and members of the Special Educational Needs Tribunal for Wales are not listed here.

99 This is possible under s.83 Government of Wales Act 2006; Judicial Appointments Commission, *Annual Report 2014/15* (HC263, 16 July 2015) 11.

100 Welsh Government, 'Appointment of the President and other members of the Welsh Language Tribunal: Statement of Appointment Policy and Procedure' (Version 1(10.12.13)) [4.3], [4.6], [4.7].

101 Judges' Council of England & Wales, 'Membership' (May 2016) <<https://www.judiciary.gov.uk/wp-content/uploads/2010/02/judges-council-latest-membership-may2016.pdf>>

3.5 Ministry of Justice

With a wide range of responsibilities covering criminal, civil and administrative justice the Ministry of Justice (MoJ) sponsors, and works with, the main justice institutions in England and Wales. These include HMCTS, the Legal Aid Agency, and the National Offender Management Service. There is also a plethora of further executive and advisory non-departmental public bodies which are its responsibility.

The Law Society in Wales has called for an effective relationship between the MoJ and the Welsh Government, especially in light of policies such as court closures which the Society did not believe reflected Welsh circumstances or 'respond to the distinct needs of Wales'.¹⁰² The Lord Chief Justice has continued to highlight weaknesses in the administration of justice in Wales and implied that the MoJ could do more.¹⁰³

The Welsh Government have a Justice Policy Team which leads on these issues but has only 4 members of staff. On the corresponding side the MoJ has a devolution coordinator. A Memorandum of Understanding between the MoJ and the Welsh Government has not yet been produced. A formal concordat or memorandum could bring more clarity and accountability for both sides and promote co-operation. Priority matters should include co-operation regarding the digitalisation of the courts and the administration of tribunals in Wales. The 'Justice in Wales' working group should advance work on this to ensure proper collaboration as law and policies diverge.

As part of the 2016 Budget, the Chancellor announced a major programme to 'create substantial centres of expertise' for the Ministry of Justice outside London to reduce costs and access skilled labour markets. The Treasury specifically mentions the Northern Powerhouse and English regions.¹⁰⁴ However, given the recognition of a body of Welsh law in the Wales Bill 2016, there is a strong constitutional and economic argument for creating a Welsh 'centre of expertise'. Given that Non-Departmental Public Bodies under the sponsorship of the MoJ, and other ministerial departments, have established centres in Wales this would be a natural progression.

HM Courts and Tribunals Service

An executive agency sponsored by the Ministry of Justice, HMCTS is responsible for the administration of criminal, civil and family courts, and non-devolved tribunals. A Wales region of HMCS was established in 2007 and this continued after the merging of the Courts and Tribunals Service in 2011.¹⁰⁵ This means that there is a directorate and support unit of the HMCTS in Wales.

Recent years have seen the concentration of HMCTS functions in specialist centres across England and Wales. Some of these functions have been concentrated at a regional Welsh level. For example, the Regional Confiscation Unit, Fixed Penalty Office and Centralised Enforcement Team operate from Port Talbot. Divorce centres have also been established in Neath, Newport and Wrexham. Bilingual provision is provided by the HMCTS Welsh Language Unit located in Caernarfon.¹⁰⁶

Other functions have been concentrated on an England and Wales level and could bring into question elements of cross-border administration. For example, all money claims are administered in Salford Business Centre and registration of appeals against DWP benefit decisions have moved to a Direct Lodgement Centre in Bradford.

The HMCTS Board is responsible for overseeing the leadership and direction of the Service. One way to enhance the representation of Wales within the shared justice system is to increase the Welsh representation on central advisory and strategic boards such as this one. For example, the HMCTS Board has a representative member from the Ministry of Justice. If responsibility for courts

102 The Law Society (n 9) 3.

103 House of Lords (n 7).

104 HM Treasury, *Budget 2016* (HC 901, March 2016) [1.287], [2.232].

105 HMCS, *Annual Report and Accounts 2010-11* (HC 1281, 5 July 2011) 14.

106 HMCTS, *Annual Report and Account 2014-15* (HC 9, 2015) 23.

and tribunals in Wales remain with HMCTS, then there is a good case for a Welsh Government representative and judicial representative from Wales to have seats on the Board.

In terms of the administration of courts and tribunals in Wales there is a specific and pressing issue regarding the position of devolved tribunals. They are not administered by HMCTS, which means that the Welsh Government have established their own arrangements for administering and supporting the devolved tribunals in Wales. Careful consideration of the sustainability of this arrangement is required, however.

Welsh Tribunals Unit

To administer some of the devolved tribunals in Wales the Welsh Government have established a Welsh Tribunals Unit (WTU). This was originally created following the recommendation of the Welsh Committee of the Administrative Justice and Tribunals Council that the government should establish a ‘focal point for administrative justice’ where policy and administrative responsibilities for Welsh tribunals could be transferred from individual departments to ensure independence and impartiality.¹⁰⁷ This was established in 2010 as the Administrative Justice and Tribunals Unit. It is now known as the Welsh Tribunals Unit and has administrative responsibilities for eight tribunals.¹⁰⁸ It has been suggested that it is in effect a ‘Welsh Tribunals Service’.¹⁰⁹

The Lord Chief Justice has doubted the sustainability of continuing two systems of court and tribunal services to administer different institutions. Attempts at managing this within the current arrangements have resulted in co-operation between HMCTS and the Welsh Government so that the work of different courts and tribunals are planned together.¹¹⁰ This has also been assisted by a secondment of a member of staff from HMCTS to the WTU.¹¹¹

As devolved tribunals operate on a Wales-only level there is a good argument in terms of accountability and subsidiarity that their administration should also be on a Wales level. Arguments for retaining the separate administration of devolved tribunals due to ‘increasing divergence between policy and practice in England and Wales’ and the small scale of Welsh tribunals remain true.¹¹² Early reforms to the administration of devolved tribunals in Scotland can provide a suitable comparison. As a starting point, the Department of Constitutional Affairs and the Scottish Executive signed a concordat to promote communication and co-operation but with specific reference to tribunals.¹¹³ Given that the Welsh Government and HMCTS have already begun co-operation in this area this could be a suitable approach.

The administration of courts and tribunals in Wales needs to be considered in detail because there are elements of significant overlap regarding tribunals in particular. It is clear that work is on-going regarding improving the administration of devolved tribunals in Wales. More generally, clear administrative arrangements through working agreements or concordats and intergovernmental relationships could usefully be put in place.

107 AJTC: Wales Committee (n 62).

108 Adjudication Panel for Wales, Agricultural Land Tribunal for Wales, Mental Health Review Tribunal for Wales, Registered Inspectors of Schools Appeal Tribunal, Registered Nursery Education Inspectors Appeal Tribunal, Residential Property Tribunal Wales, Special Educational Needs Tribunal for Wales and the Welsh Language Tribunal.

109 Senior President of Tribunals (n 75) 93.

110 The Lord Chief Justice (n 6) [32], [33].

111 CAJTW (n 70) [32].

112 AJTC: Wales Committee (n 62) [68].

113 Concordat Between the Scottish Executive and the Department for Constitutional Affairs (21 July 2005) Annex A <<http://www.gov.scot/Publications/2005/07/sedcaconcord#a21>>

National Offender Management Service

As an executive agency of the Ministry of Justice, the National Offender Management Service (NOMS) is responsible for the running of the prison and probation services. The NOMS in Wales directorate was established in 2014/15 as a response to ‘the distinct differences arising from devolution.’ Namely, that the Welsh Government has responsibility for delivering public services such as health and social services, that there is a legal requirement to deliver public services bilingually, and that some services are funded differently to England. In the view of NOMS, this will allow offender management services to be better integrated.¹¹⁴ Again, there is a clear overlap and the need for collaboration given that criminal justice is not devolved. This includes joint commissioning and co-commissioned services which allow offenders to access support services.¹¹⁵

NOMS has a Director for Wales who sits alongside other Directors in the NOMS organisation. The Director is responsible for all Welsh prisons, providing oversight and leadership to the Community Rehabilitation Company in Wales and the National Probation Service in Wales, and representing and working with the Welsh Government to ‘support an integrated system’ in line with the Welsh Government strategic programme.¹¹⁶

Establishing a directorate for Wales mean that NOMS ‘enjoys a distinctive relationship with Welsh Government.’¹¹⁷ Liaising with the Welsh Government on devolved matters is a part of the 2015 framework agreement between NOMS and the MoJ.¹¹⁸ This was not the case for the 2011 agreement.¹¹⁹ The MoJ, and other UK Government departments, could enhance this approach by encouraging partnership and co-operation directly with the Welsh Government and Welsh justice institutions in framework agreements. It would be consistent with the overarching framework of principles by encouraging better accountability and collaboration.

Probation

The UK Government treated Wales separately as part of its consultation on Transforming Rehabilitation noting that the ‘new public sector probation service will have a distinct identity for Wales’ that would facilitate a link with the Welsh Government and align contract areas with other public services such as police authorities.¹²⁰

Following that consultation, the Wales Probation trust came to an end in June 2014 and was replaced by the National Probation Service (NPS) in Wales and the Wales Community Rehabilitation Company. The NPS is directly managed by NOMS and is responsible for supervising high-risk offenders in the community. It is separated into 7 divisions which includes Wales as a distinct division with a divisional office in Cardiff. Responsibility for the National Probation Service in Wales falls on the Director of NOMS in Wales. As a result the NPS in Wales has a different relationship with NOMS compared to other divisions. For example, there is a distinct National Service Level Agreement between NOMS in Wales and the National Probation Service for services in Wales.¹²¹

The Wales Community Rehabilitation Company (WCRC) is a limited company established in June 2014. Responsibilities for the company were transferred from the Secretary of State to Working Links, a public, private and voluntary company in February 2015. WCRC has responsibilities for low and medium risk offenders across Wales. It delivers a number of services including mentoring

114 NOMS, *Business Plan 2014-15* (April 2014) 17.

115 *ibid* 17.

116 *ibid* 17.

117 IOMCymru, *Wales Reducing Reoffending Strategy 2014 – 2016*, 1.

118 NOMS, *Agency Framework Document* (March 2015) [2.3].

119 NOMS, *Agency Framework Document* (April 2011).

120 Ministry of Justice, *Transforming Rehabilitation: A Strategy for Reform* (Cm 8619, May 2013) 25, 31.

121 NOMS, *National Service Level Agreement for probation services Commissioned by the National Offender Management Service from the National Probation Service in Wales 2015-16* (April 2015).

offenders, resettlement schemes after prison, unpaid work schemes and employment, training, and education interventions.¹²² It employs almost 600 members of staff across 28 offices in Wales and deals with around 8,000 offenders.¹²³ It also operates a Welsh language scheme.

HM Inspectorate of Probation

Mention must also be made of the Inspectorate of Probation, an independent body which reports on the effectiveness of the probation system and which is sponsored by the Ministry of Justice. Although there is no direct decentralisation here there are examples where the different context in Wales is taken into account. For example, its framework document with the Ministry of Justice notes that, where appropriate, it can make contact with officials in sponsoring departments including the Welsh Government and can work jointly with Welsh regulators such as Estyn, Health Inspectorate Wales, and Care and Social Services Inspectorate Wales.¹²⁴ This is often seen for youth justice issues in particular where the HMIP can conduct ‘Full Joint Inspections’ with those Welsh bodies.¹²⁵ The development again highlights how an administrative approach through changes to framework and working level agreements can help to accommodate divergence in the justice system and factor in different social factors and policy in Wales.

3.6 Youth Justice

Youth Justice has been the subject of much debate in terms of devolution due to the significant overlap with the devolved areas of education, health, and social care. The Youth Justice Board recognises that youth justice is ‘one of the few of children and young people’s policies that has not been devolved to the Welsh Government.’¹²⁶ However, the Welsh Government does play a prominent part in developing and executing youth justice policy in Wales. This has led to different policies between England and Wales with a ‘distinctive emphasis on the primacy of welfare and children’s rights.’¹²⁷ Most notable in this regard is the effect of the UN Convention of the Rights of the Child and the rights based approach in Wales.¹²⁸

The Welsh Government has indicated its wish to have executive powers over the youth justice system but recognise that it would be difficult to separate legislative competence over youth justice from the rest of the justice system.¹²⁹ The Commission on Devolution in Wales recommended that administrative responsibilities for this area should be devolved.¹³⁰

Youth Justice Board for England and Wales

The Youth Justice Board for England and Wales is an executive non-departmental public body sponsored by the Ministry of Justice.¹³¹ The Board was established under the Crime and Disorder Act 1998 and its main functions are to provide advice to Ministers, identify and promote effective youth justice practice, monitor the performance of youth justice, and commissioning and placing young people in secure accommodation. One of the Board members represents Wales and is appointed

122 Wales Community Rehabilitation Company, *Service Directory Version 2* (October 2015).

123 NOMS, *Community Rehabilitation Company (CRC) Workforce Information Summary Report: Quarter 3 2014/15*.

124 Ministry of Justice, *Framework Document between the Ministry of Justice and HM Inspectorate of Probation*, <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2014/05/Framework_document_between_MoJ_and_HMI_Probation-rps.pdf>

125 HMIP for England and Wales, *Annual Report and Accounts 2014-15* (August 2015) 31.

126 Youth Justice Board for England and Wales, *YJB Corporate Plan 2014–17 and Business Plan 2014/15* (2014) 5.

127 S Field, ‘Developing Local Cultures in Criminal Justice Policy-Making: The Case of Youth Justice in Wales’ in M Wasik and S Santatzoglou, *The Management of Change in Criminal Justice: Who Knows Best?* (Palgrave Macmillan 2015) 172.

128 K Haines, ‘The Dragonization of Youth Justice’ in W Taylor, R Earle & R Hester (eds.) *Youth Justice Handbook* (Routledge 2013) 238; Welsh Government, *Evidence submitted by the Welsh Government to the Commission on Devolution in Wales* (February 2013) 16.

129 Welsh Government (n 11) 2, 16-17.

130 Silk Commission 2014 (n 15) [10.3.11].

131 YJB, *Annual Report and Accounts 2014/15* (HC305, July 2015).

due to their ‘understanding of public services in Wales.’¹³² The Board has five divisions, one of which is YJB Cymru that operates from Swansea.¹³³

The co-operation between YJB Cymru and the Welsh Government is evident in several initiatives and strategies such as producing the Children and Young People First strategy, enhanced case management for prolific offenders in Wales, management guidance for the governance of Youth Offending Teams in Wales, and compliance with its Welsh Language Scheme.¹³⁴ In this regard, the functions of YJB Cymru go beyond those of regional teams in England due to its work in developing policy. Due to the ‘distinct political and institutional framework’ there is a need for negotiation and collaboration which has ‘no direct equivalent in England.’¹³⁵ There is a formal working agreement between YJB and the Welsh Government that covers the following areas; a joint youth justice strategy and delivery plan for Wales; collaborative monitoring of youth justice outcome information; joint governance and oversight of youth justice delivery; exchange of relevant information; collaboration in pursuit of effective and innovative practice; jointly appointed and funded staff; and reciprocal advice on the interface between devolved and non-devolved policy.¹³⁶

As well as working with the Welsh Government, YJB Cymru can also advise and work with officials in the Ministry of Justice directly and ‘align delivery of youth justice in Wales with distinct UK and Welsh Government legislative and policy frameworks.’¹³⁷ Further, there are specific Welsh performance indicators regarding devolved areas; namely, access to suitable accommodation, engagement in education, training and employment, and access to substance misuse services.¹³⁸

The Wales Youth Justice Advisory Panel

The Wales Youth Justice Advisory Panel is a body convened by the YJB and the Welsh Government to advise on policy and implementation. It is a stakeholder group that is chaired by the YJB Board Member for Wales and the Welsh Government Director for Local Government. Other members come from a wide range of relevant professions including the Association of Directors of Social Services Cymru, police officers, probation, education, local authorities, voluntary and community sector, researchers, and Youth Offending Team Managers Cymru.¹³⁹

Youth Offending Teams in Wales

Under the Crime and Disorder Act 1998, each local authority has a responsibility to establish Youth Offending Teams either for their own area or in partnership with other local authorities.

Currently, there are 15 Youth Offending Teams in Wales.¹⁴⁰ These teams are multi-disciplinary as they include probation, social work, police, health and education professionals.¹⁴¹ YOT Managers Cymru brings representatives of the teams in Wales together to discuss and represent the teams with a unified voice.¹⁴² According to the Welsh Government, this reflects the devolved responsibilities of local authorities over education, social services, and children’s services and the responsibilities of

132 YJB Cymru, *A blueprint for promoting effective practice and improving youth justice performance in Wales* <<http://gov.wales/docs/dsjig/publications/commsafety/121022blueprint.pdf>>

133 YJB Annual Report (n 131) 23.

134 Ibid 14; Welsh Government and Youth Justice Board for England and Wales. *Children and Young People First* (July 2014); Welsh Government and Youth Justice Board, *Policy Implementation: Guidance Addressing Mental Health Problems of Children and Young People in the Youth Justice System* (2014).

135 Field (n 127) 172.

136 Welsh Government, ‘Working in Partnership with the Youth Justice Board’ (1 November 2012) <<http://gov.wales/topics/people-and-communities/communities/safety/youthjustice/youthjustice/wyjap/?lang=en>>

137 YJB Cymru (n 132) 5; YJB Annual Report (n 131) 14.

138 Youth Justice Board, *Youth Justice Statistics 2014/15* (January 2016) Annex A.

139 YJB Cymru (n 132) 6.

140 YJB Statistics (n 139) Annex B.

141 IOMCymru (n 117) 7.

142 Field (n 127) 177.

local health boards for mental health and services for misuse of drugs or alcohol.¹⁴³ The responsibility for funding these teams falls on the local authorities, with some grant availability from the YJB, but the YOTs in Wales receive extra funding from the Welsh Government's youth crime prevention fund (now called Promoting Positive Engagement for Young People (at risk of offending)).¹⁴⁴ The Welsh Government has recently had to reduce its funding to local authorities in Wales and now provides 15% of the funding to the Teams.¹⁴⁵

Given the overlap in responsibilities over several layers of governance and devolved issues, it is time to reconsider the recommendation from the Silk Commission to devolve administrative responsibilities in this area. For example, there is an issue of accountability and clarity when determining who is responsible for investing in the rehabilitation of young offenders.¹⁴⁶ Further executive devolution would support accountability and coherence of those services and provide a more aligned service for offenders.

3.7 Home Office

The Home Office is responsible for functions concerning crime, security and immigration. It is the lead department in government for immigration and passports, drugs policy, crime, counter-terrorism and the police. It is supported by several non-departmental public bodies. The identifiable expenditure of the Home Office in Wales for 2014/15 was £61 million.¹⁴⁷

The representation of the Home Office in Wales has taken different forms since devolution. Originally, there was a Crime and Criminal Justice Team in Wales, with Immigration and Crime Directors, who sat in Welsh Government buildings. With a change in UK Government policy, regional representation of the Home Office was reformed. Representation in Wales was originally retained to enable the CONTEST Board Wales on counter-terrorism to operate. There is now a Home Office Wales Team located in Wales which has a designated lead official in Wales. There has been a concordat in place between the Home Office and the Welsh Government since 2010, which was intended to reflect financial arrangements in place at the time.

The Home Office Wales Team is comprised of the Home Office lead in Wales, a manager and an administrative officer. The lead official in Wales has a strategic role with responsibility for engagement and liaison with Welsh partners and responsibility for the Home Office staff working in Wales. The main areas of work for the Wales Team are counter-terrorism, immigration, and policing. There is significant overlap in these areas with devolved matters and so the team work closely with officials in Wales. The Team can also engage with the Home Office in London to ensure that policy-makers are aware of different devolved policies in Wales. The ability to transfer responsibility for the governance of the fire and rescue service to Police and Crime Commissioners in England is a prime example of different approaches to policy between England and Wales.¹⁴⁸

Currently, the lead in Wales also undertakes a wider devolution role for the Home Office. This includes co-ordinating the Home Office response to devolution and working with the devolution team in the Cabinet Office. There are similar leads in Scotland and Northern Ireland but those roles have additional operational functions.

The Home Office Team in Wales is a notable case study. Having representation based in Wales that can liaise and communicate with Welsh authorities and who understand the context of both devolved and UK policies in Wales is an example of good practice. It is an example that other UK departments could usefully follow.

143 Welsh Government Evidence (n 11) 17.

144 YJB, *Youth offending teams: making the difference for children and young people, victims and communities Final Report* (2015) [4.13]

145 YJB Statistics (n 140) 95-96.

146 Wales Bill HC Debate 16 June 2016 Vol. 611 (Christina Rees MP).

147 Home Office, *Annual Report and Accounts 2014/15* (2015) 177.

148 Home Office, *Annual Report and Accounts 2015/16* (2016) 18.

Policing

Policing is not a devolved matter but it has attracted considerable debate regarding future devolution. The Welsh Government has said that devolution of policing should be undertaken as it is one of the only 'mainstream public services' which is not devolved to Wales and where there is 'substantial interaction with devolved services.'¹⁴⁹ Due to this, several of the approaches identified in our spectrum of forms of decentralisation are relevant when considering policing in Wales.

First, police forces operate four regional forces entirely within Wales, a feature which highlights both regionalisation on a Wales level and internal regionalisation as appropriate administrative arrangements. This is significant as further devolution, according to the Silk Commission, 'does not necessarily mean organisational change.'¹⁵⁰ The Williams Commission on Public Services in Wales also considered the advantage of having coterminosity with local health boards and local authorities on a regional level.¹⁵¹

The Welsh Government have supported policing in Wales to enhance its social justice and community safety agenda, the Welsh Government has provided extra funding for additional policing schemes in Wales. That provided £16.8 million to Welsh Police forces and the British Transport Police to fund 500 Community Support Officers.¹⁵² It also has responsibilities for funding policing in Wales. Funding of the police forces can be said to come from three sources; the Home Office,¹⁵³ the Welsh Government under the Local Government Finance Act 1988, and through local authority council tax precept. This is significant as it means that the Welsh Government has executive duties in terms of funding and that a proportion of police funding derive from devolved sources.¹⁵⁴

A Police Liaison Unit, which is funded by the police forces, is located within the Welsh Government. Its role is to assist with co-ordination and policy development. Even though policing is not devolved, due to the divergence in justice policy direct relationships with the Welsh Government are clearly important.

Police and Crime Commissioners

Accountability for policing is further localised following the introduction of Police and Crime Commissioners (PCC) that are directly elected to hold local police forces to account. PCCs are responsible for setting the force budget and precept, appointing and holding the Chief Constable to account, setting a Police and Crime Plan with the objectives for their area, and bringing together partnerships.¹⁵⁵ They are scrutinised by local Police and Crime Panels which are organised by local authorities. However, there is a subtle difference in the legislation in that Panels in England are mostly established, and members appointed, by local authorities while panels in Wales are established and appointed by the Secretary of State.¹⁵⁶

The Welsh Government has a good working relationship with PCCs and Ministers meet with PCCs on a regular basis. Statutory Public Services Boards across Wales, which the PCCs are invited to, are also used to ensure communication across different public services and different levels of government in Wales.

149 Welsh Government Evidence (n 11) 2, 15; Silk Commission 2014 (n 15) [10.3.11].

150 Silk Commission 2014 (n 15) 110.

151 Commission on Public Service Governance and Delivery, *Full Report* (January 2014), 6, 318, [2.39], [2.41], [2.84], [3.81], [4.104].

152 Welsh Government, 'Welsh Government awards over £16m for CSOs' (10 June 2015) <<http://gov.wales/newsroom/people-and-communities/2015/150610-cso-awards/?skip=1&lang=en>>

153 Home Office, *Police Grant (England and Wales): The Police Grant Report (England and Wales) 2016/17* (HC 753 February 2016) 7.

154 Silk Commission 2014 (n 15) [10.2.7].

155 Police Reform and Social Responsibility Act 2011, Chapter 3.

156 Police Reform and Social Responsibility Act 2011, Schedule 6, Parts 2 and 3.

College of Policing

The College of Policing is an interesting case study. In December 2012, the College was established as a company limited by guarantee and owned by the Home Secretary with its governing arrangement regulated through a joint protocol.¹⁵⁷ The move towards the College being only part-funded by the Home Office means that PCCs can arrange training for their areas directly with the College. This market arrangement has already begun with the South Wales PCC spending £199,000 and North Wales PCC spending £102,000 on training between 2014/15.¹⁵⁸ To this extent, there is already a decentralised and direct relationship emerging with Welsh police forces.

In other situations, Silk suggested that, if policing was devolved, funding and service-level agreements could be negotiated between the Welsh Government and the Independent Police Complaints Commission and HM Inspectorate of Constabulary to retain the current arrangements.¹⁵⁹

In sum, policing shows how different forms of decentralisation, and regionalism in particular, can facilitate the single justice system. As noted by the Silk Commission, the underpinning principle of collaboration will continue to need long-term attention, not least in terms of cross-border co-operation if policing is devolved in future. Silk suggested that police forces, if further devolution occurred, may still want to use existing England and Wales training, inspections and complaints arrangements.¹⁶⁰ Nevertheless, the establishment of the Police Liaison Unit shows that direct relationships with Welsh Government are also valuable and necessary to support diverging policies.

3.8 Crown Prosecution Service

The Crown Prosecution Service was established as an independent body under the Prosecution of Offences Act 1985. It is led by the Director of Public Prosecutions under the superintendence of the Attorney General. Its main responsibilities are to determine which cases should be prosecuted and what is the appropriate charge, prepare cases and present them at court, and provide information, assistance and support to victims and witnesses.¹⁶¹ Wales is designated as one of the 13 distinct CPS areas with its own Chief Crown Prosecutor.¹⁶² This is partly due to the fact that CPS areas are aligned with the borders of police forces. The area headquarters is based in Cardiff but it also has offices in Mold and Swansea.

An important element is that the CPS in Wales is visible to citizens as a distinct entity. It has its own website which provides information to the public regarding recent cases, information for victims and witnesses, and engagement activities.¹⁶³ There are also four Local Scrutiny and Involvement Panels that scrutinise and allow CPS to consider the views of the public and local concerns.¹⁶⁴

There are some services that operate across CPS areas. This includes CPS Direct which provides charging decisions to all police forces across England and Wales 24 hours a day and throughout the year. This service has administrative and business support provided from York.¹⁶⁵ Secondly, CPS Proceeds of Crime offices are responsible for all restraint order activity, confiscation order enforcement activity, and for obtaining some confiscation orders. The casework office for Wales also covers the North of England and operates from Leeds. With the potential for divergence in criminal law in particular, ensuring that single centre based services can give effective advice on both Welsh and English laws is important and mechanisms should be in place to keep this under review.

157 College of Policing, *College of Policing Annual Report and Accounts (2015) 2*; Home Office, *College of Policing, Protocol between the Home Office and College of Policing*.

158 College of Policing, *College of Policing Annual Report and Accounts (2015) 66*.

159 Silk Commission 2014 (n 15) [10.2.20].

160 *ibid* [10.2.18] - [10.2.20].

161 CPS, *Annual Report and Accounts 2015/16* (March 2016) 2.

162 Prosecution of Offences Act 1985, s.1.

163 <http://www.cps.gov.uk/wales/>

164 CPS Wales, 'Local Scrutiny and Involvement Panels' <http://www.cps.gov.uk/wales/involving_communities/local_scrutiny_and_involvement_panels/>

165 CPS, 'CPS Proceeds of Crime' <http://www.cps.gov.uk/your_cps/our_organisation/cpspoc.html>

3.9 Reform, Scrutiny and Oversight

National Assembly for Wales

At Westminster, the Welsh Affairs Committee and also the Justice Committee have published number of relevant reports, chiefly about prisoners, youth justice, and policing.¹⁶⁶ But the important and growing devolved contribution to the justice function also demands a sustained and coherent exercise of scrutiny in the National Assembly. It is not clear, however, how the National Assembly scrutinises relevant matters as there is no committee with a specific responsibility over justice. As seen from the example of youth justice in particular, the fragmented landscape of non-devolved and devolved matters is apt to produce a fragmented oversight of the justice function. Without clear awareness of who is responsible for what and to whom, there is an evident risk of democratic deficit.

In terms of administrative justice, CAJTW has recommended that the National Assembly provides advice and support for Members on administrative justice issues and that a specific Committee should scrutinise devolved tribunals and Welsh appeal schemes.¹⁶⁷ This should be taken further to include guidance on criminal and civil justice so that the National Assembly will be in a good position to deal with current justice matters and future powers under the Wales Bill. To ensure accountability, further consideration is required of the capacity of the National Assembly to debate issues of justice in committee and plenary sessions with a view to mitigate the evident democratic deficit.

Law Commission of England and Wales

With two legislatures in the legal system and the law in Wales and the law in England continuing to diverge, the ability of the Law Commission to adapt to fulfil its statutory functions of keeping the law of England and Wales under review is becoming more important.¹⁶⁸ Due to this, the response of the Law Commission to devolution makes an important case study as it highlights how institutions can change their arrangements to accommodate the law-making powers of the National Assembly.

The reports on Adult Social Care and Housing Tenancy Reform became significant turning points for the Law Commission. In its original consultation the Commission recommended a single statute for adult social care in England and Wales but due to the move to full legislative powers for the National Assembly it was considered ‘constitutionally infelicitous’ to proceed with that proposal.¹⁶⁹ In the field of housing, the Law Commission published a supplementary report on Renting Homes in Wales specifically for the Welsh Government.¹⁷⁰ These reports heavily influenced the Social Services and Well-being (Wales) Act 2014 and the Renting Homes (Wales) Act 2016 respectively.

The Law Commission established a Welsh Advisory Committee in 2013, with the remit to advise the Law Commission on the exercise of its statutory functions in relation to Wales, to identify the law reform needs of Wales and to identify and take into account specific Welsh issues in all law reform projects.¹⁷¹ This has resulted in direct projects on Welsh law in its twelfth programme of law reform.¹⁷² One of the most prominent is the project on Form and Accessibility of Law Applicable in Wales, which recommends a novel approach of codified bilingual legislation which is easier to access.¹⁷³ This distinctive approach for Wales is being taken forward in the next Law Commission project in Wales on planning law.¹⁷⁴

166 See for example, Welsh Affairs Committee, *Prisons in Wales and the Treatment of Welsh Offender* (HC 2014-15, 113); Welsh Affairs Committee, *Work of the Police and Crime Commissioners in Wales* (Oral and Written Evidence) (HC 2013-14, 532-i); Justice Committee, *Youth Justice* (HC 2012-13, 339).

167 CAJTW (n 70) 13.

168 Law Commission, *Response to Commission on Devolution in Wales* (Letter, 26 February 2013) [7]-[8].

169 The Law Commission, *Adult Social Care* (Law Com No 326, HC941 May 2011) [3.9].

170 The Law Commission, *Renting Homes in Wales* (Law Com No 337, Cm 8578 April 2013).

171 Law Commission (n 25) [1.5].

172 Law Commission, *Twelfth Programme of Law Reform* (Law Com No 354, HC 364, July 2014) [1.10]-[1.13].

173 Law Commission (n 25)[1.8].

174 Law Commission, *Planning Law in Wales: Scoping Paper* (Consultation Paper No 228) [1.5]-[1.10].

The Wales Act 2014 gives the Welsh Ministers a formal and direct relationship with the Law Commission for the first time. This allows the Commission to provide advice and information to the Welsh Ministers and requires the Welsh Ministers to prepare a report on the implementation of Law Commission proposals on devolved matters.¹⁷⁵

In light of the move to a reserved powers model in the Wales Bill, and the suggested consolidation and codification of the law in Wales, ensuring a stable and efficient law commission representation in Wales is essential. In that regard, the current advisory committee should be replaced by a statutory one.

Administrative Justice and Tribunals Council

The Administrative Justice and Tribunals Council (AJTC) was established to replace the Council on Tribunals and provide a wider oversight of administrative justice when the new tribunal structure under the Tribunals, Courts and Enforcement Act 2007 came into effect.¹⁷⁶ A Welsh Committee was established as part of the AJTC. The landmark Review of Tribunals Operating in Wales provided a strong basis for the gradual reform of devolved tribunals in Wales, which has occurred since 2010.¹⁷⁷ The committee also conducted visits to tribunals, meetings with stakeholders and consultations on several issues that would impact administrative justice in Wales.¹⁷⁸

The AJTC was abolished under the Public Bodies Act 2011 and the MoJ took over responsibility for the oversight of administrative justice.¹⁷⁹ As part of a compromise for Wales and Scotland, the MoJ agreed to fund interim non-statutory bodies to continue the work of their respective Committees for a period of two years.¹⁸⁰ The Committee for Administrative Justice and Tribunals Wales (CAJTW) was established and came to an end when it published its legacy report in March 2016.¹⁸¹ The corresponding Scottish Committee has also come to an end and the MoJ have announced that the Administrative Justice Forum it set up will not continue beyond April 2017.¹⁸²

It remains to be seen what effects this will have on independent oversight, scrutiny and promotion of administrative justice in Wales, but it is vital that the void can be filled by another source. The Justice Stakeholder Group established by the Welsh Government in July 2015 noted that it is necessary to ensure that devolved redress mechanisms are scrutinised and that establishing a body with similar functions to CAJTW should be considered.¹⁸³

Advisory Bodies

Mention should also be made of some other public bodies with roles connected with the oversight of administration of justice. The Family Justice Board was established to improve the performance of the family justice system in England and Wales. Its membership includes members of the judiciary, the legal professions, experts in health and social care, and user representatives. There is Welsh representation from the Welsh Government and CAF/CASS Cymru. The Family Justice Council provides expert advice to the Board and has members from the Welsh Government, CAF/CASS Cymru, and the Children's Commissioner for Wales. Further, at a Wales level, the Family Justice Network in Wales supports the Family Justice Board by advising on the Welsh context, supporting the Welsh members of the Board, and ensuring that the Board takes into account Welsh perspectives. The Network also

175 Law Commission Act 1965, ss 3, 3C, 3D (as amended by Wales Act 2014).

176 Department for Constitutional Affairs, *Transforming Public Services: Complaints, Redress and Tribunals* (Cm 6243, July 2004) [11.12].

177 AJTC Wales Committee (n 62).

178 Administrative Justice and Tribunals Council: Welsh Committee, *Annual Report 2011/12* (March 2013).

179 Ministry of Justice, *Administrative Justice and Tribunals: A Strategic Work Programme 2013-2016* (December 2012) [34].

180 Administrative Justice and Tribunals Council, *Future Oversight of Administrative Justice* (July 2013) [124].

181 CAJTW (n 70).

182 Scottish Tribunals and Administrative Justice Advisory Committee, *Future arrangements for carrying out the functions of the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC)* (May 2015) <<http://www.adminjusticescotland.com/documents/Consultation%20Paper-%20Future%20of%20the%20STAJAC%20Committee%20final.pdf>>

183 Justice Stakeholder Group (n 22) 23.

works as a link between the England and Wales Family Justice Board and Local Family Justice Boards in Wales.¹⁸⁴ Welsh expertise appears on all tiers of the advisory structure for family justice which means that the Welsh context, and any divergence in law or policy, can be taken into account. Other advisory bodies do not have the same level of representation.

The Civil Justice Council advises the Lord Chancellor, the judiciary and the Civil Procedure Rule Committee on aspects of civil justice.¹⁸⁵ It does not currently have a required representation from someone with expertise of the civil justice system and condition in Wales.¹⁸⁶ With current significant changes being made to civil justice in the field of housing and potential for similar reforms following the coming into force of the Wales Bill, having a representative which can advise on specific challenges to Wales, and their implications for the unified system as a whole, is essential.

A similar approach could be taken for criminal justice. The Criminal Justice Board is a high level cross-government group which oversees reforms to the criminal justice system. It is chaired by the Justice Secretary and its members include other high profile ministers such as the Home Secretary and chief executives of the main justice institutions in England and Wales including HMCTS and NOMS, members of the senior judiciary and high level civil servants. Its purpose is to ensure that 'each part of the criminal justice system is held accountable for delivering these reforms.'¹⁸⁷ However, it does not have designated representation with Welsh expertise.

There is a distinct Wales Criminal Justice Board which was established in May 2011. This brings together multi-disciplinary institutions in Wales including HMCTS, YJB, NOMS, NPS, CPS and government officials from the Welsh Government. It promotes close working between justice agencies and Community Safety Partnerships and sets out a strategic agenda for local criminal justice boards in Welsh police authority areas.¹⁸⁸ In its response to the Silk Commission, the UK Government noted that it would continue to liaise with the Welsh Government regarding the effective operation of the current Board.¹⁸⁹ However, further steps could be taken to recognise the joint criminal justice system of England and Wales, and the potential impact changes in the law in both countries may have on the other. Having a Welsh Government representative on the England and Wales Criminal Justice Board would allow effective sharing of best practice and fuller accountability across the jurisdiction.

With further divergence and overlap in wider areas of civil and criminal justice, following the model seen for family justice and providing greater representation for Wales on all levels is a natural progression. Having designated places for people with expertise and understanding of the distinct law and condition of Wales should be a matter of standard practice.

Equality and Human Rights Commission

The Equality and Human Rights Commission (EHRC) was established in 2007 following the merger of three equality and human right bodies under the Equality Act 2006. It is an independent statutory body which safeguards and enforces equality legislation and helps to promote equality and diversity. The Board of Commissioners includes a Welsh Commissioner which chairs a Welsh Committee and operates an office in Cardiff.¹⁹⁰

184 'Family Justice Network in Wales' <<https://www.justice.gov.uk/downloads/about/moj/advisory-groups/family-justice-network-wales.pdf>>

185 Courts and Tribunals Judiciary, 'Civil Justice Council' <<https://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/cjc/>>

186 The Judiciary of England and Wales, 'Current Civil Justice Council Membership July 2016' <<https://www.judiciary.gov.uk/wp-content/uploads/2012/02/cjc-membership-20160715.pdf>>

187 Gov.uk, 'Criminal Justice Board' <<https://www.gov.uk/government/groups/criminal-justice-board>>

188 Gwent Office of Police and Crime Commissioner, 'All Wales Criminal Justice Board' (2015) <<http://www.gwent.pcc.police.uk/engagement/partnerships/all-wales-criminal-justice-board/>>

189 HM Government (n 2) [2.9.6].

190 Equality and Human Rights Commission, *Annual Report and Accounts 2014-2015* (HC 173, 2015) 8.

There is a Concordat between the Welsh Government and the EHRC Welsh Committee to encourage a more effective relationship between them and to share information regarding their priorities.¹⁹¹ Due to constitutional changes in the UK, the Commission is aware of the need to adapt to those changes.¹⁹² The EHRC is currently funded by the UK Government. A National Assembly inquiry found ‘mixed views’ as to whether the funding responsibility should transfer to the Welsh Government as there were benefits, according to the EHRC, of remaining part of a GB structure.¹⁹³

Information Commissioner

The Information Commissioner’s Office (ICO) was established to protect and uphold information rights. This includes data protection, freedom of information, and privacy, electronic and environmental regulations. It is an independent body sponsored by the UK Department for Media, Culture and Sport. There is an Assistant Commissioner for Wales and an office in Wales. As part of its Corporate Plan, the Office recognises the need to raise awareness of information rights in a way which ‘recognises local context’ in the devolved nations of the UK.¹⁹⁴

3.10 Standing Commission on Justice in Wales

The above networks can provide oversight for specific elements of justice and, as seen, there have been developments for distinct areas of the justice system. However, if the distinctiveness of the whole system of Welsh justice is to comply with principles such as coherency there is a need for a general oversight function. The Silk Commission recommended that the UK Government should produce periodic reports, in consultation with the Welsh Government, on how access to justice is improving in Wales.¹⁹⁵ The recent ‘task and finish’ Justice Stakeholder Group established by the Welsh Government recommended maintaining a Stakeholder Group on similar lines to advise the Welsh Government further in the future.¹⁹⁶

Recent proposals from the Welsh Government go further. Welsh Ministers originally suggested an amendment to the Wales Bill to establish a Commission ‘to keep the functioning of the justice system as it applies in relation to Wales under review.’ It would be appointed jointly by the Lord Chancellor and Welsh Government following consultation with the Lord Chief Justice. Welsh Ministers envisaged that it could have regard to divergence in the law and its administration, the distinctive linguistic issues and other distinctive Welsh circumstances. The Welsh Government also wanted the Commission to keep under review the ‘question of whether the single legal jurisdiction should be divided’.¹⁹⁷ An amendment that would have allowed the Lord Chancellor and Welsh Government to appoint an advisory panel on similar lines to this was rejected at Committee Stage in the House of Commons.¹⁹⁸

Yet there is clearly merit in the concept of a standing committee or permanent commission on the justice system in Wales in order to ensure that the arrangements for the justice system are consistently progressing and moving with the pace of legislative and policy change in Wales and in England as part of the single justice system. It could also provide a forum to discuss issues regarding access to justice in Wales and provide expertise regarding specialist projects such as the law commission recommendations on codification of the law. A panel of expert members from a wide range of professions and experience, similar to the recent Stakeholder Group, and appropriately appointed, would provide enhanced authority, expertise and legitimacy.

191 Welsh Government & Equality and Human Rights Commission, *Concordat between the Equality and Human Rights Commission and the Welsh Government* (March 2014).

192 Equality and Human Rights Commission, *Strategic Plan Revision for 2015/16* (March 2015) [8].

193 National Assembly for Wales, Communities, Equality and Local Government Committee, *The future of equality and human rights in Wales* (August 2013) [30].

194 ICO, *Rights for the Future: ICO plan 2016-2019* (22 February 2016) 10.

195 Silk Commission 2014 (n 15) [10.3.47].

196 Justice Stakeholder Group (n 22) 27-28.

197 Welsh Government, *Proposals for Amendments to the Wales Bill – Committee Stage Day One* (July 2016).

198 *Wales Bill Committee of the Whole House Proceedings* (5 July 2016) <http://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0005/amend/wales_pro_cwh_0705.1-7.html>

The 'Justice in Wales' working group can make a positive contribution towards formalising and establishing the necessary arrangements for the administration of justice in Wales. However, both devolution and development of the justice system are dynamic processes. Having a Standing Commission on Justice in Wales would ensure that the legacy and objectives of the working group are continued in the medium and long term. In turn, the standing commission could advance and further develop the underpinning principles required to develop the administration of justice and access to justice in Wales, thereby ensuring a clear, efficient and collaborative approach which can promote and uphold subsidiarity and accountability for the justice system as a whole.

4. Next Steps and Recommendations

By mapping the current arrangements of legal institutions in the context of Welsh devolution, this report has demonstrated the existence of various forms and models of decentralisation. It has further highlighted a fragmented and piecemeal justice system for Wales, and hence gaps, overlaps and problems of democratic accountability classically associated with sprawling types of administrative arrangement.

The report also serves as a reminder that devolution is a challenging and evolving process. Trying to adapt a highly centralised system to accommodate a legislature and a growing body of Welsh law inevitably raises many challenges and inconsistencies. These are not insurmountable and there is precedent for making distinctive arrangements for Wales. For example, the seriousness with which the legal system has addressed the right to use Welsh in proceedings suggests that where a distinctly Welsh need within the system is addressed with rigour, the system adapts. More recent developments highlighted in this report also show that the justice system has started to react and respond to divergence. A common theme however is that much more needs to be done; examples of good practice exist which can be usefully adopted by other institutions. By considering matters in terms of a spectrum from low levels of decentralisation to full legislative devolution, fresh light is also cast on possible policy options.

The choice of particular forms of decentralisation should clearly be underpinned by appropriate principles. The Secretary of State's 'Justice in Wales' working group has an important role to play in elaborating these. As noted previously, clarity and efficiency are included in their terms of reference. At one with the approach to devolution in Wales articulated by the Silk Commission, a richer and more rounded approach is of the first importance. In terms of the shared justice system, principles of collaboration, accountability and subsidiarity are particularly important. Principles of access to justice must also be centre-stage, together with ensuring that the official status of the Welsh language is properly reflected in the justice system.

Recommendations

In the light of this principled approach, the report makes the following main recommendations:

Courts and Tribunals

1. The appointment of a Supreme Court Justice with knowledge and understanding of the distinct law and condition of Wales should be an ordinary and permanent part of the Supreme Court's composition.
2. The Administrative Court in Wales and its supporting Office serves as a valuable model for the future arrangement of court business and case allocation in Wales. A fully operational High Court Office in Wales to administer all High Court jurisdictions should be established, coupled with strengthened arrangements for both divisions of the Court of Appeal to sit in Wales.
3. The Tribunal Procedure Committee should establish arrangements to accommodate new Welsh matters. A sub-committee model, similar to the Civil Procedure Rule Committee, would seem appropriate.

Judiciary

4. The Judicial Office should establish a team to support ongoing administrative reform in light of divergences between the laws of England and of Wales. This would complement the strategic objective of the Office of supporting the judiciary ‘in its responsibilities for justice and constitutional matters’ and provide a stable legacy to the work of the current working group.

Ministry of Justice

5. Work should proceed on a formal concordat or memorandum, with a view to enhancing clarity and co-operation between the Ministry of Justice and the Welsh Government. Priority matters are co-operation regarding the digitalisation of the courts and the administration of tribunals in Wales.
6. The Ministry of Justice should establish a visible presence in Wales. In light of HM Treasury’s Budget announcement on creating centres outside London, a Ministry of Justice ‘Welsh Centre of Expertise’ should be created.

HMCTS

7. A Welsh Government representative and a judicial representative from Wales should have a seat on the HMCTS Board.

Youth Justice

8. As recommended by the Silk Commission, devolving administrative responsibilities over youth justice should be promoted to ensure accountability, clarity and coherence.

Collaboration

9. UK Government departments, namely the Home Office and Ministry of Justice, should encourage partnership and co-operation with the Welsh Government and Welsh justice institutions through framework agreements with a view to better accountability and collaboration. Specific Commissioning and Service-Level Agreements on a Welsh level should be encouraged with a view to promoting subsidiarity and accountability.
10. Publication of separate data on the administration of justice in Wales should be part of annual reports and accounts of legal institutions operating in Wales. Welsh performance indicators, similar to that in the youth justice system, should also be provided.
11. Legal institutions with distinct operations in Wales should be visible to the public with distinct parts of websites and annual reports.

Reform, Scrutiny and Advice Bodies

12. A Welsh statutory advisory committee of the Law Commission should be established.
13. The arrangements for National Assembly scrutiny of the justice functions of the Welsh Government, as recommended by CAJTW, should be reviewed by the Assembly Commission as a matter of urgency.
14. A body similar to the Committee for Administrative Justice and Tribunals, Wales should be maintained to scrutinise administrative redress mechanisms and promote administrative justice in general. This should include continued oversight of devolved tribunals in Wales.
15. Welsh professionals and experts should be encouraged to undertake roles on England and Wales, as well as Welsh, advisory bodies supporting the justice system. As a matter of standard practice, relevant bodies should designate positions for members with direct knowledge and understanding of the distinct law and condition of Wales.
16. A Standing Commission on Justice in Wales should be established to keep the arrangements under regular review.

