PUBLIC ADMINISTRATION AND A JUST WALES: Summary Report and Recommendations
(March 2020)

Dr Sarah Nason and Ann Sherlock (Bangor University), Dr Huw Pritchard (Cardiff University), Dr Helen Taylor (Cardiff Metropolitan University)

Acknowledgements:

This research is funded by the Nuffield Foundation, whom the authors would also like to thank for various assistance during the course of the project. The Nuffield Foundation is an independent charitable trust with a mission to advance social well-being. It funds research that informs social policy, primarily in Education, Welfare, and Justice. It also funds student programmes that provide opportunities for young people to develop skills in quantitative and scientific methods. The Nuffield Foundation is the founder and co-funder of the Nuffield Council on Bioethics and the Ada Lovelace Institute. The Foundation has funded this project, but the views expressed are those of the authors and not necessarily the Foundation. Visit www.nuffieldfoundation.org

The researchers would like to thank all those who participated in the project including contributing to workshops and focus groups, and completing surveys, their time and consideration has been extremely valuable, and without it this project would not have been possible. This research was conducted prior to the impact of the Covid-19 pandemic. We recognise that this has led to notable legal changes, not discussed here, many temporary, but at least some of which will lead to a permanent change in administrative justice in Wales. We hope that our Report stands as a foundational analysis of core issues in law and redress, and our recommendations help provide a basis for future reforms in the interests of administrative justice and social justice in Wales, whatever the future may hold.

Public Administration and a Just Wales

1. Justice between individuals and public institutions, including government and administrators, is known as administrative justice. This concerns how government and public bodies treat people, the correctness of their decisions, the fairness of their procedures, and the opportunities people have to question and challenge decisions made about them.[1] This summary report presents findings, analysis, and commentary arising from an in-depth study of pathways into, and the administrative justice system in Wales. A central conclusion of our research is that public administration in Wales is seen as concerned with sustainability, well-being, equality and human rights, but less often as involving justice for individuals in their relationships with the state.

2. Limited recognition in Wales of 'administrative justice' as a concept, and specifically as a system of justice, is a gap in an otherwise progressive and rights-focused public services agenda. This 'gap' may be partially responsible for Wales' recognised implementation problem when it comes to innovative social policy. Weaknesses and gaps in the provision of express, clear, accessible and effective routes to redress for individuals, and in enforcement/accountability regimes, can hamper implementation of policy goals and individuals' assurance of their rights and entitlements. The 'jagged edges' (between devolved and reserved matters)[2] also impact on administrative justice (the reservation of social security, county courts and legal aid especially), but gaps in redress here cannot be so directly attributed to the complex distribution of competences, as is the case in criminal justice (where most public and political debate has focused).

3. Our research highlights examples of good practice in Wales; including attempts to improve the accessibility of administrative law, partnership-working at various levels across and between public bodies, preventing poor administrative practice, collaboration between service providers, and promoting 'right first time' decision-making by public bodies, as well as more systematic investigation of matters affecting people, or impacting on particular services. The degree of comity or 'interoperability' between institutions in the devolved Welsh administrative justice system is already likely better than that in other jurisdictions, in part due to the size of Wales, but also due to overarching policy initiatives and leadership within specific institutions.

4. We nevertheless conclude that there is a case for strengthening legal rights to redress in Welsh administrative law, and for improved visibility and use of legal institutions (including the devolved tribunals and Administrative Court in Wales). However, this should not come at the expense of flexible, less formal structures for ensuring administrative justice. When these structures have developed from the grass roots level, including in the practice of administrators, they should be encouraged and supported with better mechanisms to identify community issues and to enable people to address concerns together and encourage lesson learning in a more informal context. This should also not come at the expense of promoting good initial administrative decision-making, including through promoting 'rights based' and preventative approaches that are a hall mark of Welsh public administration.

5. Our current Report (*Public Administration and a Just Wales*) is in four parts: Public administration and administrative law; Administrative justice institutions; Opportunities

[1] UK Administrative Justice Institute: https://ukaji.org/
[2] R Jones and R Wyn Jones, Justice at the 'Jagged Edge' (Wales Governance Centre 2019).

for legislative reform (consolidation and codification) and Redress system design and oversight. This Report focuses on the general law and structures of administrative justice in Wales and is part of a broader research programme. Also crucial to researching administrative justice is understanding how these laws and structures are experienced by people in their daily lives; both by people subject to administrative decision-making and seeking redress, and people making decisions and operating redress mechanisms. The complexity of these laws, structures and mechanisms can only be fully assessed by detailed mapping on a subject-matter specific basis. In light of this we have examined and 'mapped' administrative justice in two central areas of devolved competence; social housing and homelessness, and primary and secondary maintained education (forming two additional reports). Learning from how people experience administrative justice in these areas has informed our conclusions about the broader system. Our resulting 36 recommendations are listed at Annex One, and can be summarised as follows:

a. recommendations designed to further raise awareness and understanding of administrative justice in Wales, and its connections to policy agendas in well-being, human rights and equality. In particular to emphasize that public services issues (including in the two areas we studied in detail - housing and education) are also justice issues for individuals.
b. recommendations for improved training on administrative justice for elected representatives (at all levels) and for administrative staff in public bodies taking decisions that affect people's rights and entitlements.
c. recommendations that a principled approach to administrative justice must be taken, and that these principles should be used to guide evaluation of particular institutions within the system (tribunals, ombuds, internal review etc) as well as how the overall system is functioning.
d. recommendations around the nature of Welsh administrative laws' which place duties on public bodies and seek to promote rights, in particular to increase clarity about how these duties are intended to be enforced and these rights secured.
e. recommendations around the clarity, consolidation and codification of Welsh public administrative law.
f. recommendations to ensure better use of the administrative justice system to hold public bodies to account in a rights-based and well-being context.
g. recommendations to promote increased opportunities for the transparent judicial interpretation of Welsh administrative law, and for enhanced practical inter-action between redress institutions (including the Public Services Ombudsman for Wales, Administrative Court in Wales and Welsh tribunals).
h. recommendations on the structure and functioning of devolved Welsh tribunals.
i. recommendations for administrative justice oversight and enhanced Assembly scrutiny.

Administrative Justice Background and Issues

6. Whilst the Welsh Committee of the Administrative Justice and Tribunals Council (AJTC) (set up in 2008) focused on tribunal reforms (work continued by Welsh Government), its successor Committee for Administrative Justice and Tribunals in Wales (CAJTW) looked across the administrative justice landscape producing 35 recommendations stressing that: 'Administrative justice is not only about citizen redress but also about learning lessons from what goes wrong and incorporating them into a vision of public administration'.[3] On

[3] CAJTW 'Legacy' Report, Foreword by Professor Sir Adrian Webb (CAJTW Chair).

being disbanded (in 2016) CAJTW concluded that 'good law and effective scrutiny' are key components of administrative justice, and that advice services are crucial to enabling people to navigate redress systems and understand their rights and entitlements. Welsh Government work has continued in line with CAJTW's recommendations about the Welsh tribunals, including in relation to their procedures, processes, appointments and leadership, but less ostensible progress has been made against CAJTW's broader administrative justice recommendations.

7. One reason for the lack of explicit broader progress may have been that until recently there was no Minister, or Deputy Minister, in Welsh Government with specific responsibility for justice. The small team of relevant Welsh Government policy officials are often reacting and responding, rather than developing innovative justice policies. They are reacting to developments in the mainly reserved justice system (courts and legal aid especially), and responding, by providing information and advice to Ministers on issues raised by them. Nevertheless, there has been increased political and official recognition of the need to re-establish links between social policy and the administration of justice, and of the contribution administrative justice can make towards a more equal Wales. There is now a Cabinet Sub-Committee on Justice including the First Minister, Counsel General, and Deputy Minister and Chief Whip. This has met and discussed Welsh Government's priorities for implementing particular recommendations of the Commission on Justice in Wales, though these priorities and any estimated timescale for achieving them had not been published at the time of writing this Report.

Administrative Justice 'For the People of Wales'

8. Our research is based on engagement with peoples' experiences of administrative justice, and our participants noted that there can be serious long-term effects of poor and incorrect administrative decision-making, leading for example to children being out of school for months and years, vulnerable people remaining homeless and unsupported, significant impacts on physical and mental health, family breakdown, and problems within the criminal justice system. Feedback from our research participants and previous reports by the UK National Audit Office stress that the overall cost to society of poor administrative decision-making can be significant both in terms of financial costs to the public purse, but also a denigration in social justice. It is important for us to voice our research participants' concern that an administrative justice system must treat people with respect for their individual dignity and must not occasion more harm than it seeks to repair.

9. We found that concerns remain over limited understanding of administrative law in Wales, including among lawyers and officials, as well as the public. Difficulties persist in accessing Welsh law. In some areas Assembly legislation has added to complexity. There are various layers of regulations, statutory and non-statutory guidance, codes of practice, and other forms of 'soft law' designed at least in part (but often with other primary goals) to guide and promote good administration at strategic and individual decision-making levels. Individual measures have been enacted in response to particular problems in administration, or with good intentions to promote rights, but there is now a need to re-examine the complex frameworks that have expanded over time. Administrative decision-makers are often themselves under pressure, trying to understand complex law (and the distinction between guidance and law) in the context of what may be heavy caseloads. Being complained about, or having one's decisions challenged can also be extremely concerning for people. The system as a whole must be adequately resourced to enable decision-makers to be supported to make good decisions, to enable them to take a range

of factors into account in that decision-making, and to ensure the whole process operates compassionately, fostering a broader administrative justice culture.

10. Although we heard examples of partnership working leading to better use of resources and improved outcomes for people using public services, there was still concern that other levers are needed, including pooled budgets, to allow a full range of costs to be appreciated and addressed holistically. Increased use of partnership, shared, and collaborative working makes it more difficult for individuals to know who is actually taking administrative decisions, and thus which redress routes they should follow if dissatisfied. In the current system, redress routes can differ without much justification, depending on the type of body/individual making the decision, and the specific legislation underpinning that process. The scarcity of legal aid funding, and incoherence in coverage - where legal aid is available to support challenges to some types of decisions but not others - remains a problem, especially for vulnerable people. Authorities also tend not to collect data about the use of various redress mechanisms. We conclude that the extent of use and effectiveness of particular mechanisms to challenge administrative decisions is rarely examined. Whilst people are engaged in co-production of public services, this is often through and mediated by organisations, rather than direct engagement, and there are very limited opportunities for individuals to engage in any meaningful way in the design of redress routes in the administrative justice system.

Public Administration and Administrative Law

11. Welsh Government has pursued a distinct approach to public administration and public services delivery, where citizen centred services and collaboration rather than competition has been key. However, researchers have concluded that there is still a need for more systematic research on the extent of public service improvements and for more robust evidence to evaluate regulatory frameworks, in particular focusing on outcomes for individuals as well as understanding how a service operates as a whole.[4]

12. The Williams Commission on Public Services Governance and Delivery[5] recommended that the Assembly review existing legislation to ensure that it simplifies and streamlines public sector decision-making and either repeal complex provisions or clarify their meaning and inter-action. As Nason has noted, much of this 'new administrative law'[6] affecting public sector decision-making in Wales is concerned to promote rights, equality and well-being. Welsh Government is leading work to 'strengthen and advance' equality and human rights in Wales, including by reviewing existing legislative frameworks and seeking reform; specifically reforms to 'de-layer' these frameworks where they have become excessively complex. The broader administrative justice context to this equality and rights legal framework should be properly taken into account.

13. Sustainability in particular is a central organising principle of public administration in Wales, and a duty on public bodies in light of the Well-being of Future Generations (Wales) Act 2015 (future generations regime). It is beyond the scope of our research to assess the impact of the future generations regime, but various reports from the Future Generations Commissioner for Wales suggest that excellent progress has been made in some areas whilst there is much work still to do. Similarly, a Working Group set up under the Welsh

[4] Public Policy Institute for Wales, *Improving Public Services: Existing Evidence and Evidence Needs* (2016).
[5] Williams Commission (2014): https://gov.wales/sites/default/files/publications/2019-01/commission-public-service-governance-delivery-full-report.pdf
[6] S Nason, 'The "New Administrative Law" of Wales' [2019] *Public Law* 703.

Government's Gender Equality Review found that the kind of reflexive learning encouraged by legislation like the future generations regime, and Welsh specific equality regulations, is still 'missing or insufficiently realised' in many contexts.[7] Administrative justice adds value here as it seeks to alleviate structural inequality through a principled approach to public administrative law, and fair, proportionate and accessible routes to redress. Learning from the administrative justice system (e.g., through the investigations of ombuds and commissioners, and data from tribunals and courts) can help identify the extent of structural inequality and the comparative success or failure of government policies designed to address it. Strategic development of administrative justice in Wales, including legislative development and training, should where possible, be aligned with existing and future planned initiatives relating to sustainability, well-being, equality and human rights.

14. The Commission on Justice in Wales concluded that Welsh policies on sustainability and human rights are not integrated with the justice system, nor are the distinct legal frameworks and 'independent public officers whose role is to protect and promote rights' aligned to the justice system.[8] We examine these comments in detail in our full Report. This lack of integration and alignment could relate to the fact that neither the sustainability duty, nor human rights stressed in specifically Welsh law, are currently coupled with a specific cause of action to seek legal redress in a court or tribunal. The 'back stop' of judicial review in the Administrative Court is relied on, but as we discuss, this is simply not a realistic prospect for the vast majority of people.

15. We acknowledge that the balance between promoting sustainability, rights and equality, through catalysing behavioural change on the one hand, and by providing individual redress mechanisms on the other, is complex. We do not believe 'aspirational' to be a pejorative term when applied to legislation. As Professor David Feldman notes this kind of legislation lies on the boundary between law, politics and morality and achieves its effects largely by psychological means, tapping into the reservoir of respect for the legitimacy of the state and its institutions.[9] Our research has disclosed an evident reluctance on the part of individuals to challenge state institutions in Wales through the administrative justice system. Perhaps the corollary of this is that public bodies in Wales might have similar levels of deference to legislative language such that aspirational legislation is more likely to be treated as 'binding' by Welsh public bodies than might be the case by bodies in other legal jurisdictions. This could be a matter for further research. Nevertheless, despite the benefits of promotive legislation, there are signs that an approach with more teeth is being considered. For example, the Gender Equality Review Working Group have recommended strengthening legal duties, including extending the coverage of these duties to different bodies and decision-makers, and enabling public bodies to be held to greater account for the substantive outcomes of their policies and decisions.

16. After his tenure as Chair of the Commission on Justice in Wales, Lord Thomas was critical of aspirational legislation as raising false hopes and undermining the rule of law.[10] His

[7] Dr. Alison Parken, *The report of the Well-being and Equality Working Group: Improving Well-being and Equality Outcomes: Aligning processes, supporting implementation and creating new opportunities* (July 2019): https://chwaraeteg.com/wp-content/uploads/2019/09/Aligning-and-Improving-Outcomes-for-Well-being-and-Equality.pdf
[8] Commission on Justice in Wales, para 12.21.
[9] David Feldman, 'Legislation as Aspiration: Statutory Expression of Policy Goals' (IALS 2015): http://www.statutelawsociety.co.uk/wp-content/uploads/2015/03/Feldman-Legislation-as-Aspiration.pdf
[10] Lord Thomas, 'Thinking policy through before legislating – aspirational legislation' (Statute Law Society, Renton Lecture 2019): http://www.statutelawsociety.co.uk/home/lord-thomas-text-aspirational-legislation-21-11-19/

central interrelated conclusions were: first, that legislation which seeks to improve administrative decision-making must be drafted with sufficient precision to enable an appropriate court, tribunal or other enforcement body to determine whether relevant duties have been discharged on the basis of objective evidence; second, that the use of different enforcement mechanisms should be explored which could include a court or tribunal, but also potentially an ombud with an adjudicative role, or a commissioner with enforcement powers. We discuss these institutional matters further below, here we draw the following conclusions about Welsh general administrative law:

a. Aspirational legislation that seeks to encourage responsive and reflexive behaviour still needs to be delivered through administrative processes, and public bodies must be obligated to demonstrate that they have complied with these processes.
b. There needs to be more clarity and consistency in legislation and guidance about what these processes require, and consideration of whether they could be strengthened to make public bodies accountable for the outcomes of their decision-making, avoiding process-based duties being seen as a tick box exercise.
c. The duties themselves (in relation to well-being, equality and human rights) can sometimes lack clarity in their content, and there is still limited public awareness and understanding.
d. Welsh administrative procedure legislation is distinctive in its heavy dependence upon implementation, it sets out aims that public bodies are required to complete through their own administrative processes, yet accountability through judicial review especially is weak.
e. Legislation and guidance sometimes lack clarity (and in some cases also coherence) in the various accountability methods that are to apply, and sometimes lack coherence around the division of functions between particular public officials (Commissioners, regulators etc).
f. There is a lack of transparent, independent judicial interpretation of Welsh public administrative law and opportunities for clarification have been missed. This may be seen as undermining the rule of law in Wales.
g. The provisions of Welsh administrative law are in effect, 'quasi constitutional' expressed notably in the language of constitutions and/or bills of rights, but without constitutional status and without strong rights of enforcement for individuals and groups.

Administrative Justice Institutions

The Administrative Court and Judicial Review

17. Welsh 'quasi-constitutional' administrative law placing rights, equality and well-being duties on public bodies, largely relies on judicial review in the Administrative Court for legal redress. We consider this to be a relatively weak form of accountability in practice. Deference to process and sensitivity to the respective expertise and constitutional position of judges and administrators is built into the procedure, it is not well designed as a means to protect individual rights, even if this is how it is most often used in practice. Practically, the paucity of legal aid, continued lack of awareness of Welsh law, and to some extent a culture of individual deference to authority, means that it can be difficult to identify and to fund cases where Welsh law would benefit from transparent, independent judicial interpretation, and which would pass the necessary threshold of 'arguability' on their individual facts.

18. An Administrative Court was established in Cardiff in 2009 as part of proposals made by a Judicial Working Group for Justice Outside London to decentralise judicial review in England and Wales, allowing cases to be issued and determined locally reducing costs and inconvenience for 'regional' litigants and their lawyers. Although the vast majority of claims against Welsh public body defendants are now issued in Cardiff and heard in Wales, it remains common for cases to be started elsewhere (usually in London) and subsequently transferred to Cardiff under the relevant Practice Direction. From 1 January 2019 to 16 September 2019, there were 87 claims issued in the Administrative Court in Cardiff, with a further 34 transferred in.

19. Empirically, Wales continues to generate fewer ordinary civil (non-immigration) judicial review claims per-head of population than English regions, and the proportion of claims issued by unrepresented litigants is increasing (in Cardiff and across the Administrative Court as a whole). Legal aid reforms have had a disproportionate impact on access to judicial review outside London, including in Wales. Barristers based at chambers in Wales are instructed in only a small proportion of the total number of claims handled by the Administrative Court in Cardiff. Barristers in Wales do handle a larger proportion of pre-litigation work, but it seems there is less confidence in instructing them to appear before the Court. The judicial review caseload pertaining to Wales is diverse, often involving a complex mixture of devolved and non-devolved law and policy relevant to the particular claim. The Public Law Project and Nason's analysis of 82 substantive judicial review judgments delivered by the Administrative Court in Cardiff over an eight-year period showed, however, that only 26 judgments involved an examination of primary or secondary legislation, or guidance made by the Assembly or Welsh Ministers.[11]

20. Previous England and Wales research has found that only a small proportion of judicial review claims reach a final substantive hearing, and most of those withdrawn at various stages result in a negotiated solution favourable to the claimant. There may also be many potential judicial review claims resolved through pre-action correspondence or informal negotiation prior to issue. More research is needed into pre-action activity in Welsh public administrative law. We heard examples in our housing and education research of potential claims curtailed when public bodies had either conceded the legal point, or more often committed to re-taking a decision in the individual's favour without conceding any legal errors in the initial decision. We heard that the learning from these potential challenges might be being passed on through public body networks, but not in a systematic fashion, and not in a way that would be communicated to a range of others (including individuals) who might be affected.

21. The Commission on Justice in Wales proposed that it should be compulsory under the Civil Procedure Rules for claims against Welsh public bodies challenging the lawfulness of their decisions to be issued and heard in Wales. This could extend not just to the Administrative Court, but also to claims against public bodies in the county courts which may be even more likely to turn specifically on day-to-day matters of Welsh public administrative law. Currently the CPR and judicial pronouncements create a strong presumption (but not a firm rule) that judicial review, and other Administrative Court claims against Welsh public bodies should be issued and heard in Wales. Procedural amendments to judicial review can be made through CPR Practice Directions, and such rule changes have also been used to create Wales only statutory appeals in the

[11] Commission on Justice in wales, 'Judicial Review in Wales' Submission by Public Law Project and Dr Sarah Nason: https://llyw.cymru/sites/default/files/publications/2018-11/submission-to-the-justice-commission-from-public-law-project-sarah-nason.pdf

Administrative Court in Cardiff, that must be issued and determined in Wales. There are clearly sound constitutional and access to justice reasons for this proposal, but some concerns remain around a requirement that claims against Welsh public bodies 'must' be issued in Wales, if access to legal aid funded public law advice remains a problem (and perhaps more of a problem in Wales than it is in England). To use the phrase of one of our research participants, 'access to judicial review is a mess everywhere and most people can't afford it'. Nevertheless, we see significant value in the Commission's recommendation, as long as it is progressed alongside increased support for the public law legal profession in Wales and initiatives to improve public access to legal advice including legal aid funded advice and assistance.

The Public Services Ombudsman for Wales (PSOW)

22. The PSOW provides a 'one stop shop' for complaints against public bodies in Wales. Its corporate plan for 2019/20 is entitled 'Delivering Justice', noting that the PSOW's mission is: 'To uphold justice and improve public services'. Research suggests that ombuds occupy a unique position, able to foster co-ordination and co-operation between parts of an administrative justice system.[12] Ombuds in general have great potential as accountability institutions for human rights and equality; their services are cost-effective and flexible, they can advise on matters of policy, conduct dynamic investigations with operational impact, may be a particularly appropriate forum for disputes turning on the allocation of resources, and can recommend a range of remedies that are invariably complied with.

23. The Public Services Ombudsman (Wales) Act 2019 gives the PSOW new powers, including to conduct own initiative investigations. The Act also provides the PSOW with more flexibility in receiving complaints and enables the establishment of a Complaints Standards Authority.

24. The Senior President of Tribunals in England and Wales has called for more 'interoperability' between ombuds, courts and tribunals, noting that there is some evidence of a 'lawyerisation' of administrative justice, potentially at the expense of making full use of expertise from in other parts of the system. We suggest that this 'lawyerisation' is less evident in Wales, but that nonetheless there could be increased inter-action building on that already established between the PSOW, Administrative Court in Wales, and devolved Welsh tribunals as a means to better co-ordinate access to administrative justice in Wales.

25. In this context, in our full Report, we focus on three Law Commission recommendations; removal of the statutory bar (where an ombud cannot investigate if an individual could have sought, or could be reasonably expected to have sought, a remedy in a court, tribunal or other review mechanism); giving the Administrative Court power to stay proceedings for an ombuds investigation and; giving the ombud a power to refer a point of law to the courts. The Commission on Justice in Wales endorsed the latter two recommendations with respect to the PSOW. Our research participants were generally in favour of implementing all three recommendations but noted that 'the devil would be in the detail' of precise legislative and procedural changes, and how new processes are intended to operate in practice.

26. Removal of the 'statutory' bar has been considered by a Assembly Finance Committee who were concerned about altering the relationship between an ombud and a court on a

[12] R Kirkham and C Gill (eds), *A Manifesto for Ombudsman Reform* (Palgrave Pivot 2020).

Wales only basis. This 'may' raise questions of legislative competence; removing the bar would involve amendment to devolved legislation (now the PSOW Act 2019) and would have an 'impact' on the reserved matters of courts, and judicial review of administrative action. However, concerns about the costs of a 'twin track' approach (where the PSOW effectively has some degree of concurrent jurisdiction with the legal branch) are less well founded. Concurrent jurisdiction is likely to be used sparingly, and will mainly be relevant where there is value in applying expertise necessary to clarify the law, as well as expertise relevant to improving standards of public administration. This combination of both types of expertise has the potential to avert costly future disputes, and lead to administrative savings.

27. There would be no legislative competence issues raised in removing the statutory bar only so far as it concerns the jurisdiction of the devolved Welsh tribunals. As the Commission on Justice in Wales recommended (and we examine in our full Report) there is a case for giving these tribunals additional roles in the determination of Welsh administrative law disputes. Tribunals also have a role to play in subject-matter specialist aspects of rights and equality adjudication, especially in relation to socio-economic rights. Their flexible and more inquisitorial procedure can make them well suited to appreciating the nuances of rights, equality and discrimination issues.

28. The Commission on Justice in Wales endorsed proposals for the Administrative Court to be able to 'stay' proceedings for an ombuds investigation. Again, the devolved tribunals in Wales could be given this specific power (including through a new Welsh Tribunals Bill – a likely product of a current Law Commission project). In practice, the Administrative Court in Wales can use its existing stay powers to allow for a PSOW investigation if a judge is so inclined. But the Law Commission concluded that a specific new formal power would require changes to the Senior Courts Act 1981 and the Civil Procedure Rules, and as such this may raise issues of Assembly legislative competence. Likewise, giving the PSOW a specific power to refer a point of law to the Administrative Court in Wales, would require an amendment to the PSOW's powers, but would also have an impact on the jurisdiction of the Court, which the Law Commission considers necessitates changes to judicial review procedural rules.

29. In our full Report we discuss further whether a legal reference procedure should be designed only to facilitate clarification of the law, or whether this could extend to the provision of individual redress beyond the powers of the PSOW. Potential blurring of lines between a determination of legal rights and addressing issues of maladministration needs to be carefully considered. Disputes, even in the administrative justice system, are often centrally about maximising legal rights protection for individuals. Determination, and clarification, of legally guaranteed rights is something distinctive (if overlapping) from problem-solving, fostering good relations, or promoting good administration, well-being and other values. This is an important consideration for the future development of public law and administrative justice in Wales.

30. The rationale of increased co-ordination and co-operation between legal and non-legal redress mechanisms could be progressed in part by less formal mechanisms, and this may already be achieved to a degree in Wales. For example, through engagement between the PSOW and the Administrative Court Liaison Judge for Wales, and with the President of Welsh Tribunals and/or individual Tribunal leads. Informal discussions and sign-posting between Welsh Tribunal Unit staff and PSOW staff, and sign-posting by the four Commissioners in Wales, are also part of this picture, assisting and enabling people to seek

the redress most appropriate to them, and advising on navigating statutory bars, time limits and costs considerations.

31. We conclude however, as did the Commission on Justice in Wales, that in the longer term a more rationalised approach to seeking resolution of both administrative and civil disputes in Wales is desirable, making the best use of various attributes and expertise, and legal and administrative pathways.

Tribunals

32. Our full Report builds on a body of research into the developing tribunals system in Wales. We note that devolved tribunals have been at the centre of justice reform, in part due to being the only judicial bodies administered by Welsh Government, but also because this is an area of justice where there is a degree of consensus between Welsh and UK Governments, resulting in provisions about Welsh Tribunals being included in the Wales Act 2017.

33. Welsh Government is responsible for funding the statutory tribunals administered by the Welsh Tribunals Unit (WTU). The WTU is a management structure within the Welsh Government that provides administrative support for each Welsh Tribunal. In 2010 Welsh Government had established an Administrative Justice and Tribunals Unit in response to an AJTC Welsh Committee report on devolved tribunals. The current WTU was established in 2015. It might seem somewhat of a retrograde step to move from a broader Administrative Justice and Tribunals Unit, to a more specific WTU. We question whether this reflects limited Government interest in a wider account of administrative justice, noting also that no successor to CAJTW has been established either. On the other hand, it may reflect Government's wish to specifically ensure that the *judicial* character of tribunals is understood internally, where the shadow of tribunals being part of Government *administrative* departments still looms. The WTU management structure provides some degree of separation from policy departments whose policies and actions may be scrutinised by tribunals.

34. Protecting judicial independence is part of the remit of the Law Commission's current review of Welsh tribunals. This is also important to the President of Welsh Tribunals (PWT) and was highlighted by the Commission on Justice in Wales. The lack of independent status of the WTU is an issue which the PWT is eager to tackle 'as soon as reasonably practicable'. We examine the ways of achieving this including through various 'Scottish models' developed over time due to reforms establishing a Scottish Courts and Tribunals Service, which has also included the transfer of administration for tribunals covering reserved matters. An incremental approach was developed in Scotland through the creation of the Scottish Tribunals Service as a delivery unit of the Scottish Government in 2010 (until the Scottish Courts and Tribunals Service was established in 2015). This initial development is an example of a 'quasi-independence' approach, which commentators have argued can be effective where there is strong political leadership to uphold the structure. Nevertheless, ensuring that independent and impartial justice is 'seen' to be done is a powerful principle, and a tribunals system requires more than the limited associations which can be developed by sharing administrative support.

35. Scotland now has a separate Scottish Courts and Tribunals Service. This model could not be adopted for Wales without legislative devolution, and it was recommended for eventual adoption (by the Commission on Justice in Wales). However, there are other models Wales

could consider more immediately, for example a structure of an independent Welsh Tribunals Service that would have responsibility for several tribunals, could be led by a Chief Executive accountable to a Welsh Tribunals Service Board, which would itself be scrutinised by the Assembly. The President of Welsh Tribunals could continue to provide judicial leadership. We note that the Wales Act 2017 does not provide guidance on the supervisory role of the President of Welsh Tribunals, and that the Commission on Justice in Wales recommend that this role should extend over all public bodies making judicial or quasi-judicial decisions in Wales. This would potentially mean reconceptualising the role of the President, but it would certainly mean introducing new responsibilities and significantly expanding the President's workload.

36. A Welsh Tribunals Service could be established similarly to the current Welsh Revenue Authority (WRA) as a statutory non-ministerial department; a body corporate that is legally separate to the Welsh Government, but is staffed by civil servants, with a Board responsible for strategic direction. A Welsh Tribunals Board structure could include sub-committees for developing oversight and strategic direction for matters such as judicial salaries, pensions, complaints, and training. It would also, by being allocated a specific budget, improve transparency in relation to the resources provided by the Welsh Government for the administration of the Welsh tribunals. The WRA non-ministerial model is in close alignment with the current WTU structure in terms of civil service staffing arrangements and current operation. It would formalise the independence of WTU from Welsh Government. This is attractive in terms of incrementally developing the WTU and giving it its own recognisable identity.

37. In addition to structure and independence, a central issue for devolved Welsh tribunals is digitalisation, with broader England and Wales reforms likely to have significant impacts in Wales. There is evidence of different paces of digitalisation in Wales, with some tribunals better equipped for digital working than others. We have heard concerns about potential two-speed or multiple speed processes where Welsh tribunals might be left behind reserved bodies in part due to being less able to take advantage of economies of scale. It is important that the risks and benefits of digitalisation in Wales are equally understood and that enhancing access to digital justice does not become another means of entrenching existing inequalities.

38. The Commission on Justice in Wales recommended that devolved Welsh tribunals should be used for dispute resolution in relation to future Welsh administrative law duties. This recommendation should require Welsh Government to provide more detailed justification regarding their political choices about appropriate means of dispute resolution in draft primary and secondary legislation. These choices should be scrutinised by the Assembly Legislation, Justice and Constitution Committee, and thought must be given to increasing the resources of individual Welsh tribunals and the WTU. The reality, as can be seen from relevant Justice Impact Assessments, is that it currently makes financial sense (from a Welsh Government spending perspective) for redress under Welsh law to mirror that in English law and to use England and Wales courts and tribunals, even if this may not make financial sense for individuals using the system, and may indeed make access to justice more difficult for people in Wales. A main concern here is that the context of the devolution settlement makes it difficult for Welsh Government and the Assembly to develop and adopt innovative solutions from a Welsh perspective, especially if these include previously untested methods that diverge from their English counterparts.

Opportunities for legislative reform (consolidation and codification)

39. Given that Wales is actively considering the structure of future Codes of Welsh Law and how to better communicate the effect of legislation and clarify its meaning, we consider the case for consolidation and codification reform in administrative law. In our separate reports on education and housing we consider the case for codification of these areas of law. Codification provides a unique opportunity to simplify and more rationally systematise the law, but also to perform an educative function of what law and justice in Wales for the people of Wales means. In our full Report we examine Welsh Government's proposed 'Public Administration' Code for Wales and propose that the future generations regime should be included within that Code (as sustainability is a key duty on public bodies and a 'central organising principle' of public administration). We also propose that legislation governing the Children's and Older People's Commissioners' for Wales should be included in that Code. Codification also provides an opportunity to reconsider the case for greater consistency in the roles and procedures of some of the Welsh Commissioners, and that Commissioners should generally be accountable to the Assembly rather than Welsh Government.

40. Further we argue that the clarification, consolidation and codification process provides an opportunity to review (and where appropriate streamline) administrative law duties on public bodies in Wales (as recommended by the Williams Commission on Public Services Governance and Delivery). We also propose that the Public Administration Code could be 're-badged' as a Public Administration and Administrative Justice Code, in light both of the Welsh Government's intention to include legislative provisions relating to devolved Welsh tribunals (as judicial not administrative bodies) in the Code, and the need to take a principled approach which affirms the special character of administrative justice. We consider the case for a future Administrative Procedure Act for Wales and that clear thought must be given to how such an Act could be drafted, what duties (existing and future potential) it could include, and how this relates to any proposals for a 'Human Rights Act' (or Code) for Wales. We argue that both a Human Rights Act/Code for Wales and an Administrative Procedure Act/Code for Wales must contain express mechanisms for seeking redress against breach of their provisions.

Redress System Design and Oversight

41. The Commission on Justice in Wales concluded that the 'system of administrative justice [is] undoubtedly difficult for individuals to understand and use'.[13] We consider that there are three key elements to improving this situation; access to information and advice helping people to navigate and use the system; adopting a more coherent approach to redress design in that system; and ensuring continued future oversight.

42. Whilst design thinking is evident across Welsh Government, we conclude that the political, indeed constitutional nature of designing redress mechanisms to challenge state decision-making has not yet been fully realised, and that redress design is not considered to be a discrete, specialised activity, requiring a significant evidence base and consultation. Confusion over the legal enforceability of the future generations regime is one example, but there are other examples from our case-study areas of housing and education, and in other subjects such as social care. Whilst there is engagement between Justice Policy and Legal Services Teams in Welsh Government, and with the Ministry of Justice, we believe that the voice of the potential 'user' of the administrative justice system, the individual who

[13] Commission on Justice in Wales, para 6.16.

might need to seek redress for breach of particular provisions, is not being sufficiently considered in the process of redress design, and that opportunities for innovation are limited, including by the current devolution settlement. The content and effect of Justice Impact Assessments under the Wales Act 2017 in particular, should be continually evaluated.

43. Both CAJTW, and more recently the Commission on Justice in Wales, expressed concern about the creation of 'ad hoc' 'quasi-judicial' redress mechanisms (for schemes like the Discretionary Assistance Fund for Wales (DAF), and various appeal panels including in the forestry context, and school exclusions appeal panels convened by local authorities). We endorse CAJTW's previous recommendation that greater coherence and principled consistency could be brought to the operation of these 'ad hoc' mechanisms, and that there should be a presumption against the creation of new 'ad hoc' schemes. In our full Report we examine the Commission on Justice in Wales' recommendation that 'ad hoc' schemes should be reviewed and supervised by the President of Welsh Tribunals.

44. In our full Report we also draw on a framework of three 'orders' of redress design developed by Professor Andrew Le Sueur.[14] First Order Change is where the overall goals of policy instruments remain the same, but there may be fine-tuning of existing procedures or changes in practices within current legislative frameworks. Here there is likely already a broad consensus about policy aims, and tends to be little consultation, legislative or governmental interest in redress design changes. Usually these changes are implemented through restructuring administrative practices, and there tends to be value in the institutions responsible for the redress having sufficient autonomy to initiate, plan and implement the reforms. We note some valuable examples of this kind of change in Wales, particularly in the way some local authorities manage homelessness decision-making, and also in the practices of the PSOW. However, we also note that local authority officials, and officials within executive agencies, or even politicians, can engage in redress design without necessarily realising that they are doing so, adding further weight to our recommendation that there should be more specific training on administrative justice.

45. Second Order Change involves establishing novel techniques, or new procedures and institutions for carrying out redress. This more likely involves policy-focused officials, departmental and Assembly lawyers, Welsh Government legislative counsel and Assembly Members. Examples include the creation of the Office of Welsh Language Commissioner and establishing the Welsh Language Tribunal under the Welsh Language (Wales) Measure 2011, and reforms to the powers of the PSOW, including the power to conduct own initiative investigations (under the Public Services Ombudsman (Wales) Act 2019). In each of these examples there was public consultation and Assembly scrutiny. However, an area of Second Order Change that tends to receive little attention is the conscious (or even subconscious) decision not to change existing redress mechanisms utilised under the England and Wales administrative justice system, when legislating to create new rights and duties specifically under Welsh law. We suggest that this could be down to a range of factors including: the assumption (sometimes without detailed evidence) that existing mechanisms and practices are working well; innovation in redress design is not attempted due to concerns that substantive law on the one hand, and redress mechanisms on the other, should not be changed at the same time as this might lead to confusion and difficulties for individuals in accessing justice; that there is political disagreement over

[14] Andrew le Sueur, 'Designing Redress; Who Does it, How and Why?' (2012) 20(1) *Asia Pacific Law Review* 17.

which redress mechanism(s) to adopt and resulting provisions (including in legislation) reflect a compromise position (that sometimes consequently lacks clarity).

46. In our full Report we consider the factors for and against express creation of new grievance processes in legislation that would be useful for various people involved in redress design in Wales to consider, and endorse conclusions from previous research proposing 'a presumption in favour of all administrative decision making schemes making express provision in legislation for an effective pathway and remedies for addressing disputes and grievances'.[15] The organisation Public Law Wales has argued that: 'As a matter of principle, where the National Assembly legislates on a non-reserved matter, any administrative remedies created should be by recourse to the Welsh Tribunals system'.[16] The Commission on Justice in Wales has more broadly recommended that: 'The Welsh tribunals should be used for dispute resolution relating to future Welsh legislation'.[17]

47. Le Sueur's final category of change is 'third order'. Here the power of change is activated by the persuasiveness of ideas. This results in a programmatic strategy extending beyond concerns for grievance redress, for example to modernise public services, or even to change constitutional relationships between legislature, executive and judiciary. UK-wide examples have included the Citizen's Charter Programme, enactment of the HRA 1998, and emphasis on user focus and proportionate dispute resolution following a 2004 Government White Paper and enactment of the Tribunals, Courts and Enforcement Act 2007. Potentially in Wales we are experiencing a programme of change that is tantamount to third order change, but which (as the Justice Commission puts it) may not be sufficiently integrated nor aligned to the justice system. If sustainability is truly to be the central organising principle of Welsh public administration, alongside increased incorporation of international human rights standards and emphasis on enhancing equality (in particular equality of outcome), this arguably represents a paradigm shift for administrative justice. Expert contributors to our research suggested that this implies an approach to public administration, and particularly an approach to public administrative law (as aspirational, seeking to promote certain moral norms), quite different to the England and Wales common law, and constitutional, tradition. We conclude that the redress requirements, or implications, of this paradigm shift have not been fully thought through. In our Report we note a range of principles and guidance that can be used to assist in redress design.

48. In his foreword to Professor Christopher Hodges' book, *Delivering Dispute Resolution: A Holistic Review of Models in England and Wales*,[18] Lord Thomas argues that: 'What is plainly needed is a system that is cohesive and coordinated. Such a system must cover all forms of dispute resolution, including informal resolution at the outset by advice and discussion'. Lord Thomas goes on to conclude that this cohesive and coordinated system cannot be achieved by 'tinkering' but requires 'a rebuild of the present system of advice and dispute resolution to form an integrated and comprehensive system'.

49. The foundational ideas behind this direction of reform are not new; there has long been discussion of the value to a 'single point of entry' or 'one stop shop' approach to

[15] Le Sueur, 'Designing Redress' (n 245).
[16] Public Law Wales, Evidence to Commission on Justice in Wales https://gov.wales/sites/default/files/publications/2018-08/Submission-to-the-justice-commission-from-public-law-wales.pdf
[17] Commission on Justice in Wales, para 6.59.2.
[18] Christopher Hodges, Delivering Dispute Resolution: A Holistic Review of Models in England and Wales (Hart Publishing 2019).

administrative justice, beginning with access to information, advice and assistance, enabling people's problems to be appropriately 'triaged' to the most appropriate form of dispute resolution (be that a court, tribunal, ombud, ADR or other process). Such was recommended for Wales in Bangor's 2015 Research Report and commended by Hickinbottom J (as he then was) in his foreword to the book, *Administrative Justice in Wales and Comparative Perspectives*.[19] Professor Hodges too considers that a holistic review is well overdue, and that current complexity results in people who wish to complain having to navigate a bewildering maze. This is likely exacerbated in Wales as the maze has both devolved and non-devolved pathways that may interact and overlap.

50. New pilot schemes (largely affecting England) have been aimed at coordinating the jurisdictions of courts and tribunals, drawing together claims arising from the same dispute, which fall under more than one jurisdiction. Hodges considers that the 'long-term aim is the establishment of a single administrative law jurisdiction'. This may cause particular problems for Wales, as whilst the majority of disputes continue to be resolved through an England and Wales Courts and Tribunals system, substantive Welsh administrative law is diverging from English law.

51. Various studies and initiatives examining a more holistic approach to dispute resolution (notably in housing, but also to some extent in education) have been conducted ostensibly on and England and Wales basis, but due to timing, scope or objectives, we conclude that none has been able to fully consider the current situation of law and dispute resolution devolved to Wales, or the inter-action between devolved and non-devolved law and redress. This means that some proposals then developed either do not apply to Wales, or their application is problematic. There is a growing need for Welsh Government and the Assembly to review systems of public administrative law and dispute resolution specifically from a Welsh perspective. We conclude that this may have to start with basic questions around what it is that administrative decision makers actually have to do in various contexts in Wales, how difficult are those tasks, how do they establish facts, apply relevant law and exercise appropriate discretion in particular situations, how can this be viewed through the key lenses of sustainability, human rights and equality?

52. We conclude that there must also be continuing oversight of how administrative justice is developing in Wales, in particular because it is the system of justice most likely to impact on peoples' lives. The Commission on Justice in Wales recommended a discrete number of largely judge led bodies to supervise and oversee the development of justice systems and dispute resolution in Wales. In our full Report we make recommendations around how to ensure the composition of those bodies and their activities takes account of the importance of administrative justice.

53. Whilst the Justice Commission's proposed methods of promotion, coordination and supervision of dispute resolution provide some degree of oversight of the administrative justice system, we suggest they are unlikely to go far enough, and argue the case for establishing a specific statutory oversight body, or at the very least a specific forum within Welsh Government to regularly engage with the community of administrative justice stakeholders that has developed since 2015 especially. We recommend that a longer-term oversight body should: be independent and have sufficient authority to challenge politicians; it should have sufficient resources and be able to carry out tribunal oversight visits; must have a separate secretariat and research functions; be established by statute

[19] Nason (ed), *Administrative Justice in Wales and Comparative Perspectives* (UWP 2017).

including having statutory powers and duties, and a statutory relationship whereby reports must be laid before the Assembly and must be responded to; it must be able to provide support and training to administrative justice professionals and be transparent in its activities. We also recommend that the Assembly Legislation, Justice and Constitution Committee take up the opportunity to recognise and scrutinise administrative justice as a central element of justice in Wales for the people of Wales.

Annex One: List of Recommendations

R1: We recommend thought be given to increasing the number of permanent staff of the Welsh Government Justice Policy Team.

R2: We recommend that Welsh Government Justice Policy Team retains a panel of academic experts from which to seek advice and research assistance on an ad hoc basis (similar to arrangements in place to provide rapid expert knowledge to Welsh Government in relation to the context of Brexit).

R3: We Recommend that there should be training on administrative justice, in particular CAJTW's Principles of Administrative Justice for Wales, for Assembly Members, Assembly Commission staff and local councillors in Wales. This could be delivered by, or in association with, members of the UK Administrative Justice Council Academic Panel, other subject area experts, and Welsh Government Justice Policy Team.

R4: We recommend that training and awareness of administrative justice be incorporated into training on Public Service Values and Leadership Behaviour and other training modules and resources delivered by Academi Wales.

R5: We Recommend that the 'Artemus' Digital Map of administrative justice can be utilised as a training resource subject to funding and/or other support to ensure its sustainability.

R6: We Recommend that Welsh Government's Strengthening and Advancing Equality and Human Rights in Wales Steering Group holds a specific workshop examining how administrative justice can contribute to combating structural inequality in Wales, and improving equality of outcomes for individuals.

R7: We Recommend that Welsh Government reviews its Core Guidance on the Well-being of Future Generations (Wales) Act 2015 specifically to address lack of clarity over how certain duties are intended to be enforced.

R8: We Recommend that the Well-being of Future Generations (Wales) Act 2015 is amended to revise and clarify the respective roles of the Future Generations Commissioner for Wales and Auditor General for Wales.

R9: We Recommend Welsh Government and the Assembly keep the Well-being of Future Generations (Wales) Act 2015 under review in light of the passage of the UK Well-being of Future Generations Bill through the Westminster Parliament.

R10: We Recommend that the Assembly Legislation, Justice and Constitution Committee conduct an inquiry into the perceived lack of integration with the justice system of Welsh policies on future generations, sustainability, and international standards on human rights.

R11: We recommend this inquiry also examines why the distinctive legal frameworks being developed to underpin these policies, including the creation of independent public officers whose role is to promote and protect rights, are perceived as not aligned to the justice system. This inquiry should also examine 'aspirational' legislation, including legislation that is 'responsive' and 'reflexive', and the relationships between such legislation and the rule of law.

R12: We Recommend that the Welsh Government Cabinet Sub-Committee on Justice, and the Assembly Legislation, Justice and Constitution Committee, monitor any further proposed reforms to judicial review by the UK Government and Westminster Parliament and seek to mitigate the effects of any such reforms on the rule of law and public body accountability in Wales.

R13: We Recommend that the Assembly Legislation, Justice and Constitution Committee conduct its own inquiry into the effectiveness of judicial review as a remedy for breaches of Welsh administrative law and/or breaches of general administrative law principles by devolved Welsh authorities. This should also take into account the role of judicial review in the context of integrating Welsh policies on future generations, sustainability, international standards on human rights, and Welsh specific equality duties, with the justice system.

R14: We Recommend that the Law Commission and Welsh Government consider the case for including an express power for devolved Welsh tribunals to 'stay' proceedings for a PSOW investigation to be included in any draft Welsh Tribunals Bill.

R15: The Commission on Justice in Wales has recommended that: 'Dispute resolution before courts, tribunals, alternative dispute resolution and ombudsmen, as well as dispute resolution in respect of administrative law, should be promoted and coordinated in Wales through a body chaired by a senior judge'. We Recommend that consideration be given to whether one of the functions of this board could be promoting 'comity' and 'interoperability' between the PSOW and courts and tribunals in Wales. This could extend to advocating for enactment of the Law Commission's 2011 Recommendations that the Administrative Court should have a power to 'stay' proceedings for an ombuds investigation and that ombuds should have a power to refer a point of law to the Administrative Court.

R16: We Recommend that any Assembly Legislation, Justice and Constitution Committee inquiry into the integration and alignment with the justice system of Welsh policies on future generations, sustainability and international standards on human rights, takes into account the contribution of the PSOW to administrative justice in Wales.

R17: We Recommend Welsh Government examines developing the Welsh Tribunals Unit as an independent statutory non-Ministerial body, with a Board and Board Chair, and Chief Executive. We Recommend that this body should be founded on a principled approach recognising the distinctive character of administrative justice, and that it should be scrutinised by the Assembly.

R18: We Recommend that any digitalisation reforms in Wales should be introduced in the interest of good administration and access to justice and that the President of Welsh Tribunals and Welsh Tribunals Unit should closely monitor reforms to the First-tier tribunals in particular to determine what is appropriate for Wales.

R19: It should not be assumed that technological developments for courts should be transferred directly to tribunals. We Recommend a review of digital strategy for tribunals in Wales, and that reforms should be tailored appropriately to context, not 'one size fits all'.

R20: We Recommend that Welsh Government, the Lord Chief Justice and the President of Welsh Tribunals produce further Guidance on the role of the President of Welsh Tribunals, especially taking into consideration the extension of functions recommended by the Commission on Justice in Wales.

R21: We Recommend exploring the potential for greater 'interoperability' and 'comity' between the Administrative Court in Wales and the devolved Welsh Tribunals, especially in relation to human rights and equality. This could be explored by any new board created to promote and co-ordinate dispute resolution in Wales, and/or jointly by the President of Welsh Tribunals and Administrative Court Liaison Judge for Wales.

R22: We Recommend Welsh Government publish a searchable database of all Integrated Impact Assessments on the Law Wales website.

R23: We Recommend, that the Well-being of Future Generations (Wales) Act 2105, and legislation relating to the Children's Commissioner for Wales, Older People's Commissioner for Wales be included within the currently proposed 'Public Administration' Code for Wales.

R24: We Recommend Welsh Government and the Assembly review the range of human rights, well-being and equality based administrative procedure laws applying to some or all Devolved Welsh Authorities, with a view to achieving greater consistency, simplicity and coherence, and with a view to improving practical impacts on the quality and outcomes of administrative decision-making. We recommend that these legislative provisions be consolidated (with a view to codification).

R25: We Recommend that the proposed 'Public Administration' Code be 're-badged' as a Public Administration and Administrative Justice Code, in light both of the inclusion of the Devolved Welsh Tribunals (as judicial not administrative bodies) and the need to take a principled approach which affirms the special character of administrative justice.

R26: We Recommend that developing a 'Public Administration', or 'Public Administration and Administrative Justice' Code for Wales provides the opportunity to reconsider the case for greater consistency in the roles and procedures of some of the Welsh Commissioners, where appropriate, and that Commissioners should generally be accountable to the Assembly rather than Welsh Government.

R27: We Recommend that Welsh Government and the Assembly consider the case for future drafting of an Administrative Procedure Act for Wales, to include consolidated human rights, well-being and equality based procedural duties, potentially extending to other matters such as 'Ways of Working', the right to be given reasons for an administrative decision, and compensation for wrongful administration not actionable as a civil wrong. An Administrative Procedure Act must contain an express mechanism for seeking redress for breach of its provisions.

R28: We Recommend that key case law (especially that interpreting and applying devolved Welsh administrative law) be included, as a matter of presentation and quick accessibility, within a 'Public Administration' or 'Public Administration and Administrative Justice Code' for Wales, but that such common law should not itself be codified.

R29: We recommend Welsh Government and the Assembly adopt a presumption in favour of an express provision in legislation for an effective pathway and remedies for addressing disputes and grievances, in the first instance within the devolved Welsh tribunals.

R30: We recommend that Welsh Government (including the Welsh Government Cabinet Sub-Committee on Justice) and the Assembly Justice, Legislation and Constitution Committee monitor on an ongoing basis the capacity of Welsh tribunals to cope with any possible increase in caseload.

R31: We Recommend that it is necessary in Wales to promote and enable better engagement and involvement with individual and group users of administrative justice redress mechanisms. This should extend to involvement in the design of redress mechanisms, and oversight of their operation, as well as the greater participation by individuals in resolving their own disputes that can be facilitated by an empowerment approach to advice services, and through technology (and specifically by digitisation). This could be promoted variously by Welsh Government Justice Policy Team, any board established to promote and co-ordinate dispute resolution in Wales, by the President of Welsh Tribunals, by the proposed Law Council for Wales, and by the Wales National Advice Network.

R32: We Recommend that the Welsh Government Justice Policy Team, and other redress designers across Government, adopt the following checklist (especially when conducting Justice Impact Assessments), and that the checklist is also utilised in scrutiny by the Assembly Legislation, Justice and Constitution Committee:

1. There should be a presumption in favour of all administrative decision-making schemes making an express provision in legislation for an effective pathway and remedies for addressing disputes and grievances
2. Institutional design should respect constitutional principles
3. There should be public accountability for the operation of grievance handling
4. Evidence and research should inform the creation of new redress mechanisms and the reform of existing ones
5. There should be opportunities for grassroots innovations
6. Mechanisms should ensure value for money and proportionality
7. There should be a good 'fit' between the type of grievance and the redress mechanism
8. Fair and rational criteria and processes should be used to 'filter' inappropriate grievances
9. As well as dealing with individual grievances, redress mechanisms should contribute to improvements in public services
10. Whenever new issues arise that need to be dealt with by the administrative redress system, consideration should first be given to allocating them to an existing redress institution under an existing procedure
11. Redress mechanisms should be designed primarily from the users perspective

R33: We Recommend that, if established, a body to promote and co-ordinate dispute resolution in Wales should have a diverse membership particularly from across the administrative justice sector; including the Administrative Court Liaison Judge for Wales, the President of Welsh Tribunals, the PSOW and Welsh Commissioners, representatives from the Welsh Local Government Association, and from the advice sector as well as groups representing users.

R34: We Recommend that this body considers how to promote the use of devolved redress mechanisms (including devolved Welsh tribunals) as a means to resolve disputes; and that it should take stock of existing examples of interoperability between ombuds, tribunals, courts and other bodies, and examining how to improve this for the future.

R35: Drawing together the various evidence, we recommend the establishment of an independent statutory oversight body for administrative justice in Wales, and that such should be defined by the following characteristics.

- Independence and sufficient authority to challenge politicians

• Sufficient resources, extending to personnel and expertise, including resources necessary to conduct tribunal oversight visits
• A separate secretariat
• A separate research budget and appreciation of the centrality of research to policy-making
• Be established by statute, including statutory powers and duties, and a statutory relationship whereby reports must be laid before the relevant parliament and must be responded to
• Must be able to make recommendations across the whole administrative justice sector, and not be rooted in 'silos' or arms of the justice system
• Must have the capacity to act as both watchdog and mentor, reviewing the functions and effectiveness of various institutions and procedures, but also making proposals to facilitate better decision-making, and providing support and training to administrative justice professionals (including tribunal members and others)
• Must bring together policy-makers, practitioners and academics
• Must have to ability to work flexibly and adapt to changes in the nature of administration and new challenges (must be reactive as well as proactive in its functions)
• Must be transparent in its activities

R36: Given the necessary time taken to develop statutory oversight, we recommend the immediate establishment of an Administrative Justice Forum (similar to the previous MoJ AJF) with an independent chair and membership to include representatives from the judiciary, ombudsmen and other complaint handlers, academics, and organisations representing users of the system. This could hold two formal meetings per-annum, as well as occasional topic specific workshops, seminars or other meetings and activities. This Forum could eventually become a sub-committee of a body established to promote and coordinate dispute resolution in Wales.