

**Comments on the recommendations of the Commission on Justice in Wales
to the Welsh Government's Justice Transformation and Devolution Team**

I am pleased to have the opportunity to contribute my comments on the recommendations of the Commission on Justice in Wales, published in October 2019. You may be aware that I submitted evidence to the Commission in June 2018 (see [here](#)) and I am pleased to note that some of my suggestions and concerns were addressed in the Commission's recommendations.

General comments

I broadly welcome the Commission's report. It offers, in my view, a highly comprehensive - and much needed - overview of the operation of the justice system in Wales. I believe and hope that it will serve as a solid foundation for the enactment of reforms needed to ensure that the people of Wales can fully benefit from unfettered access to a high quality justice system.

Devolution of justice to Wales

The main recommendation of the Commission is that justice policy, including matters of governance and the inspection of police, prisons and probation, should be devolved to Wales; bringing it in line with the devolution settlement in Wales and Northern Ireland.

Such developments, if enacted, could have an impact on my remit and operations. In particular, they would, in my view, call for the reconsideration of jurisdiction over complaints by serving prisoners.

Responsibility for handling of such complaints is currently divided between the Prisons and Probation Ombudsman (PPO), the Parliamentary and Health Service Ombudsman and my office. What is more, access to an independent ombudsman service differs for the prisoners serving in the public sector prisons, compared with

those serving in HMP Parc Bridgend, which is operated privately by G4S. I outlined these arrangements in more detail in [my recent response](#) to the Health, Social Care and Sport Committee's inquiry into the provision of health and social care in the adult prison estate (December 2019).

Overall, in my view, the current arrangements are unclear and complex and do not help prisoners in Wales access administrative justice. I would suggest that, if responsibility for prisons in Wales remains in Westminster, there is a need to ensure that all prisoners in Wales have equal access to administrative justice. In particular, I suggest that:

- PPO should be named in legislation as one of the bodies I can cooperate with in an investigation;
- professional/clinical judgement should be included in PPO's remit for health services in private prison(s) in Wales (HMP Parc);
- prisoners should have access to clear guidance as to how to complain and who to complain to, for the different aspects of prison services (PHSO, PPO and my office).

However, if the Commission's recommendation - that 'matters of governance and inspection of police, prisons and probation, along with other aspects of the justice infrastructure' should be devolved to Wales - is taken forward, I would suggest that:

- my jurisdiction should be extended to include prison complaints, as well as health services for prisoners;
- my jurisdiction should be extended to include private prisons in Wales on the same basis as for other prisons (i.e. including professional/clinical judgement in health service matters).

Specific recommendations

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| <p><u>Recommendation 1</u></p> <p>The funding for legal aid and for the third sector providing advice and assistance should be brought together in Wales to form a single</p> | <p>I welcome this recommendation. In seeking to strengthen and organise support for the sector, it addresses the concerns I shared with the Commission in June 2018.</p> |
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| <p>fund under the strategic direction of an independent body.</p> | |
| <p><u>Recommendations 21 and 23</u></p> <p>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.</p> <p>The feasibility of a low cost and effective resolution method for civil disputes through the use of a comprehensive ombudsmen (sic) scheme, taking into account the online court, should be examined in Wales</p> | <p>I broadly welcome all efforts to make the justice system simpler and more efficient. However, the report refers to the arrangement suggested only in very general terms and I would reserve my opinion on the proposals until further details become available.</p> <p>It is also unclear to me at this stage what ombudsman schemes are referred to in the recommendation. While the preceding paragraphs make a passing reference to my office, their main focus appears to be on bodies such as the Financial Ombudsman Service and consumer ombudsmen. Indeed, I'd point out that recommendation 23 appears to be based on the analysis of the administrative justice system in England, focused strongly on the practice of consumer ombudsmen. I would therefore welcome clarification of the scope of this recommendation.</p> |
| <p><u>Recommendations 25 and 28</u></p> <p>All public bodies, ombudsmen and other tribunals which have been established under Welsh law or by the Welsh Government, which make judicial or quasi-judicial decisions, and are not currently subject to the supervision of the President of Welsh Tribunals, should be brought under the supervision of the President.</p> | <p>As above, I broadly welcome all efforts to make the justice system simpler and more efficient. Again, however, it is unclear to me what bodies would fall within the scope of the proposed arrangement (I note reference to plural 'ombudsmen') and what is the meaning of the term "quasi-judicial" decisions in this context.</p> <p>I also believe that the notion of 'supervision' of the President of Welsh Tribunals requires further clarification. There is certainly a lively ongoing</p> |

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| <p>The recommendations for coordinating and rationalisation made for civil justice [see 21 and 23 above] should also be applied to administrative justice</p> | <p>debate between the policymakers, academic researchers and administrative justice practitioners on the need to ensure complementarity between the ombudsman sector and the tribunals system. Nevertheless, I'd underline there are some key differences between these two types of bodies. For instance, decisions of tribunals are legally binding, whilst my decisions are not. I'd therefore be cautious of endorsing any suggestion that the two types of bodies should be treated in exactly the same way.</p> <p>I'd also underline that the President issues practice and procedural directions for the Welsh Tribunals. As a point of principle, it could undermine the independence of my office to be directed in this way. The independent process of appointment by the Assembly of the Ombudsman (which is provided for in the Public Services Ombudsman (Wales) Act 2019) is regarded as best practice internationally to protect the independence of ombudsman institutions.¹</p> <p>In general, I believe that any changes which would have the effect of introducing an overly legalistic approach to the work of my office would be a retrograde step, given that my office is intended to be an alternative avenue of redress to the courts and tribunals and that I have a wide discretion in assessing complaints of maladministration or service failure.</p> |
| <p><u>Recommendation 26</u></p> <p>The Administrative Court should have the power to stay court</p> | |

¹ See for instance [the Venice Principles](#) endorsed by the International Ombudsman Institute.

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| <p>proceedings whilst the Public Services Ombudsman for Wales investigates a complaint. The Ombudsman should have the power to refer a point of law to the Court</p> | <p>I welcome this recommendation. It responds directly to my suggestions shared with the Commission in June 2018. ²</p> |
| <p><u>Recommendation 51</u></p> <p>The Welsh Government should lead the development and implementation of an action plan to promote and support public legal education, particularly for children and young people</p> | <p>I welcome this recommendation, reinforced also by the Commission’s clear concern about a lack of public awareness and understanding of the justice system (especially by some protected groups) (see, e.g. pp 117-8 and 428-9).</p> <p>I believe that there is much scope for improving public awareness, not only of the legal system in general, but also of administrative justice and the ombudsman service more specifically. Indeed, I’d argue that we should aim for nothing less than treating good administration as a fundamental human right³ and promote it accordingly.</p> <p>I’d suggest that this recommendation can be fruitfully taken forward under the new curriculum for Wales and the new Areas of Learning within it. However, I would welcome further conversations with the Welsh Government and other stakeholders regarding any other promotional and educational projects that could be undertaken to improve access to justice for the people of Wales.</p> |

Closing remarks

I trust that you will find my comments useful. Should you wish to discuss any of my points further, please do not hesitate to contact Ania Rolewska, my Head of Policy

² This matter was [considered](#) by the Finance Committee of the Assembly in May 2015.

³ The EU Charter of Fundamental Rights already adopts this approach (see [Article 41](#)).

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