

Welsh Government. A New Tribunal Service for Wales. White Paper

Response from Propertymark

September 2023

Background

1. Propertymark is the UK's leading professional body of property agents, with over 17,500 members representing over 12,800 branches. We are member-led with an executive Board of practicing agents who we work closely with to ensure that we uphold high-standards of professionalism and are able to advocate for legislative change on behalf of the sector.

Overview

2. The Welsh Government are consulting on proposals to reform devolved tribunals in Wales. Their goal is to create a unified and coherent tribunal system that will better meet the present needs of tribunal justice in Wales. The Welsh Government are also looking to make the tribunal service more adaptable to meet the future needs in Wales.
3. For this consultation, we have responded to areas that lie within our remit in housing. Propertymark is very interested in developments of the Welsh legal framework especially given the developments in housing law in Wales. However, we felt that it would be inappropriate to comment on the technical and administrative based questions for this consultation.

Questions

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

4. Yes, we agree with the nine tribunals that the Law Commission has identified and that they fall within the powers devolved to Wales. We are particularly interested in the Residential Property Tribunal for Wales, which falls within our member's remit.

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

5. We generally support the proposed structure of the unified tribunal system for Wales and the recommendations made in the Leggatt Review. The review concluded that a unified tribunal

would offer a consistent development of law, a more coherent structure to management of workloads and a more common approach to decision making.

6. We understand that the proposed approach is like the tribunal system used in England which has proved effective. We understand that each constituent part of the unified tribunal which specialises in the current system, will have a separate chamber which we also support to ensure that specialisation and expertise. This is especially fundamental in the case of the current property tribunal as housing law has had recent radical changes in the form of the Renting Homes (Wales) Act 2016.¹ The consultation document also references a separate chamber approach used in Scotland and given these considerations we are satisfied.

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

7. Yes, we agree with the proposed structure for the tribunal membership in the unified tribunal system. This proposal will offer a unified approach where appropriate legal expertise and authority will be utilised across the chambers of each current tribunal area. Currently, the Property Tribunal has sufficient levels of expertise and seniority, and the proposal will bring the other chambers in line.

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

8. Yes, we agree with the proposal from the Law Commission that the Welsh Tribunals should be transferred into the First-tier Tribunal for Wales

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

9. We agree, but in doing so we also recognise the changes that will be required in the structure of the valuation's tribunal as a unified tribunal. We also recognise the synergy in casework between the Valuation Tribunal and the Residential Property Tribunal. By incorporating a unified tribunal this could be an opportunity to share expertise and resources where commonality exists.

¹¹ [Renting Homes \(Wales\) Act 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2016/12)

Furthermore, while we recognise that the Valuation Tribunal is not remarkably different to the other tribunals to warrant its existence as a separate entity, we acknowledge there would have to be structural and practical changes including current members are volunteers. We believe this could be a further opportunity to improve the professionalism of decision making and incentive sufficient expertise in an area that is becoming increasingly complex.

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

10. Chiefly, we do not see any reason why the Valuations Tribunal should not be transferred to the First-Tier Tribunal for Wales.

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

11. Although this is not an area of PropertyMark's expertise, we are content with the recommendations made by the Law Commission.

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

12. PropertyMark is not in a position to comment on this question.

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

13. PropertyMark is not in a position to comment on this question.

Do you agree with the initial chamber structure we propose for the Firsttier Tribunal for Wales?

14. Earlier in this consultation response, we stressed the importance of maintaining expertise, which we are satisfied will be maintained by adopting a chambers approach. We also recognise the greater opportunity for chambers to collaborate where there is a synergy in their casework using the example of the Valuations Tribunal and the Residential Property Tribunal. Therefore, we are

satisfied with the chamber structure. We are also content that the proposed chamber's structure which offers flexibility in the event of further tribunals being added to the structure. While the consultation document highlights youth justice as a possible example, given the radical changes in housing law between Wales and England, additional consideration could be given to housing disputes to be included.

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

15. In principle we agree. Concentrating on legislation around renting property in Wales, there has been a clear divergence in the legal framework for renting between Wales and England since the enactment of the Renting Homes (Wales) Act. We note the comments made in Lord Thomas's Commission on Justice in Wales report² that Welsh Tribunals have been underutilised. However, it is likely that given the provisions in the 2016 Act that the scope for the Residential Property Tribunal is likely to increase. These cases could include disputes between landlords and contract holders of privately rented accommodation with regard to the refusal of adaptations, the variation of rent or any other provision outlined in the Act. In essence, given the radical differences in housing law between Wales and England, we agree. However, we can not comment on other proposed matters for the proposed unified tribunal.

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

16. Propertymark's favoured legislative model for housing disputes, would be a dedicated Housing Court.³ Fundamentally, we believe this would offer greater access to justice to both landlords and tenants involved in housing disputes. The most common dispute between these parties is in relation to when a landlord wishes to seek possession of their property. Possession claims are currently heard in County Courts and are hampered by poor performance and delays.

17. The current County Court system is hampered by poor court administration, the time taken to obtain a possession order, the time taken for enforcement, inconsistent judgements as well as contradictory advice of local authorities. In addition, there are concerns in disputes involving rent

² [Commission on Justice in Wales report | GOV.WALES](#)

³ <https://www.propertymark.co.uk/resource/objections-raised-on-proposals-to-extend-notice-periods.html>

arrears where a tenant can pay one month's rent and make the court order invalid only to fail to accrue future rent arrears. There have also been reservations over the level of understanding of housing law from District Judges.

18. A dedicated housing court could take the strain off an already engulfed County Court system, offer dedicated housing expertise as well as being fully accessible for both tenants and landlords. While a dedicated housing court remains our favoured options, we believe consideration should be given to devolving the responsibility of possession claims from County Courts to the First Tier Tribunal of Wales.
19. Earlier in this response we have already outlined the radical differences in housing law between England and Wales since the enactment of the Renting Homes (Wales) Act 2016. Differences between the two nations are likely to increase with the Renters (Reform) Bill in England waiting for its second reading in the UK Parliament.⁴ This will create an even more radical shift in policy where in England they are proposing the abolishment of so-called 'no fault' evictions through a Section 21 notice in favour of a more grounds-based approach via the courts. In Wales, a landlord retains the right to seek possession without reason via a Section 173 notice. However, in doing so they must offer six months' notice and cannot do so in the first six months of the fixed term. These changes may offer further justification for Welsh possession claims being heard in a separate jurisdiction than in England either through a dedicated housing court or through the First Tier Tribunal.

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

20. Propertymark thinks there may be areas where an appeals tribunal may be entirely appropriate. However, we can only comment on disputes involving the Property Tribunal and we feel that an appeals process would be inappropriate for the property chamber. In such disputes involving property, a swift conclusion is highly desirable for both landlord and their tenants and we would be concerned that an appeal could be used vexatiously to further delay due course.

⁴ <https://bills.parliament.uk/bills/3462>

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

21. Yes, we agree that the Appeal Tribunal for Wales should be the appellate body for appeals from the First-tier Tribunal for Wales unless there are exceptional reasons requiring different provision to be made.

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

22. Yes, we agree that jurisdictions should be transferred to the Appeal Tribunal for Wales over time, and that they should be organised into chambers by subordinate legislation made by the Welsh Ministers with the concurrence of the President of Welsh Tribunals. In its current form we do not believe an appeals process for residential property cases would be appropriate given the need for quick access to justice and decision making. However, such a process may be fundamental for other areas.

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

23. Yes, we agree with the proposed statutory duty to uphold judicial independence applying to all those with responsibility for the administration of justice as that applies to the reformed tribunal system in Wales.

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

24. A statutory duty to uphold independence should apply to all members of the tribunal. Throughout this consultation, we have referenced the Renting Homes (Wales) Act and other key pieces of legislation. We agree that all Members of the Senedd should also be included as they have ultimate responsibility for Welsh legislation.