

The Rt Hon. Mark Drakeford MS
First Minister

Mick Antoniw MS
Counsel General and Minister for the Constitution

28 January 2022

Dear both

Draft Budget 2022-23

I am writing to provide you with the outcome of our scrutiny of the Welsh Government's draft budget for 2022-23 as it applies within your areas of responsibility (although we recognise that it cuts across the responsibilities of other Ministerial portfolios). Our recommendations below therefore concern two specific areas: justice and legislative activities.

In order to assist with our work, we sought information from the First Minister on 10 December 2021 and a response to our request was received on 10 January 2022. We are grateful for this response and the evidence provided by the Counsel General on 17 January 2022.

Justice

This is the first time a scrutiny committee in the Senedd has undertaken budget scrutiny of the Welsh Government's justice-related spending and as such, marks an important milestone in improving the scrutiny of these issues in the Senedd and Wales.

In his letter to us of 10 January, the First Minister provided us with information indicating the resourcing lines within the draft budget *from which* justice work will be delivered. In so doing, he highlighted that spending on justice-related activity is not separately disaggregated, reflecting "the reality that the devolution settlement now in place does not fund the Welsh Government to have a



justice function" and that current justice related activity cuts across various Ministerial portfolios and MEGs.

Central Services Administration MEG

This MEG contains budget expenditure lines (BELs) for the Justice Commission in Wales and Tribunals.

In the Justice Commission in Wales BEL, £490,000 is allocated for 2022-23 and the two subsequent financial years. An official accompanying the Counsel General stated that the allocation is for the following activities:

*"coming on for two thirds ... is the cost of half a dozen staff to oversee the recommendations and support the Cabinet sub-committee in developing its work programme, taking it forward. And the remainder is a small budget that can be used on research and events, stakeholder engagement and the like. It's not all allocated, every penny of it, for each of the next three years, but it is obviously a commitment to there being funding available to keep this work moving over the next three years."*¹

The official accompanying the Counsel General also told us that the figure also includes Welsh Government staff working to take forward the Law Commission of England and Wales's recommendations on devolved tribunals in Wales. We were told that this accounts for a "significant proportion of the £490,000..."²

Recommendation 1: The Welsh Government should explain how it will monitor and evaluate the effectiveness of funding allocated within the Justice Commission in Wales BEL.

The Counsel General indicated that resources for this budget line would be used to develop a work programme for the Cabinet Sub-committee on Justice. He also referred to publication of "a programme related to the issues around social justice and the devolution of justice and a strategy in the spring".³

We are making the assumption that the strategy will be developed from the justice work programme but will refer to the latter throughout this letter.

Recommendation 2: We would welcome greater clarity and details on what work to develop and publish a justice work programme will be delivered from within the Justice Commission in Wales BEL in 2022-23.

¹ LJC Committee, RoP [29], 17 January 2022

² LJC Committee, RoP [65], 17 January 2022

³ LJC Committee, RoP [18], 17 January 2022

As regards the Tribunals MEG, we note the allocation of some £4.2 million for the administration and support of the Welsh Tribunals in 2022-23. We highlighted in the evidence session the important role played by Welsh Tribunals during the pandemic and the way in which they have responded to the challenges of coronavirus and the need to operate remotely.

Recommendation 3: The Welsh Government should provide more detail about how this £4.2 million is used for that administration and support. In particular, we would welcome information about how much funding is allocated or set aside for improving remote access for citizens, investing in new technology and maintaining and improving physical and built infrastructure.

In making this recommendation, we recognise the leadership role of the President of the Welsh Tribunals. However, the Welsh Tribunals Units, which administers Welsh Tribunals, is currently part of the Welsh Government (being neither an executive agency nor a non-ministerial department).

Cross-government funding

In his letter to us of 10 January, the First Minister confirmed that Welsh Government funding for justice is not confined to the Central Services and Administration MEG, but cuts across the Economy, Health and Social Services, and Social Justice MEGs.

However, the First Minister also said that:

"as part of the on-going justice transformation programme we will explore if there are any ways in which we can improve the level of information we provide about justice expenditure."

Recommendation 4: The Welsh Government should work toward disaggregating spending on justice in future budgets. For each BEL identified in the First Minister's letter of 10 January, the Welsh Government should identify relevant funding targeted at justice-related work. We believe this would be beneficial not just for scrutiny, transparency and accountability, but also for the Welsh Government in delivering better justice outcomes. We also see this process as being important in readiness for any future devolution of justice functions, when such an approach would be essential.

During our evidence session, as indicated above, the Counsel General made reference to publishing the justice work programme.

Recommendation 5: The justice work programme should contain measurable actions and specific programmes for delivery that are fully costed.

The Counsel General highlighted the challenge of ensuring that there is a collaborative, co-ordinated and joined-up approach between all relevant organisations to delivering and improving justice-related services.⁴

When it was suggested that an annual report would be appropriate, pulling together the work of all the disparate organisations to improve accountability and the monitoring of progress, the Counsel General acknowledged the need to bring together all existing reporting mechanisms.⁵ He stated that “an annual or comprehensive justice report on progress” would be “very useful in terms of monitoring and scrutinising the progress that's been made in these areas cohesively”.⁶

Recommendation 6: The Counsel General should commit to an annual report highlighting progress in delivering the justice work programme and evaluating outcomes against spending in relation to all individual components, highlighting also the contributions of relevant organisations as part of this process.

During our evidence session with the Counsel General, we discussed the importance of Welsh Government funding for advice services in ensuring access to justice. The draft budget allocates over £10m to advice services in the Social Justice MEG for 2022-23.

In his letter of 10 January, the First Minister explained that this funding is for the implementation of the Information and Advice Action Plan and that it includes grant funding for social welfare advice services through the Single Advice Fund, implementation of the Advice Quality Framework, and the “promotion of networking as a means of helping people attain a better understanding of accessing their individual rights”.

Recommendation 7: The Welsh Government should provide a detailed breakdown of funding for advice services and should evaluate outcomes against spending on advice services as part of its annual report on justice.

We believe that, in accepting these recommendations, the Welsh Government will help deliver a recommendation of the Commission on Justice in Wales for the Welsh Government to strengthen leadership and accountability on justice matters, which was highlighted in the First Minister’s letter of 10 January.

⁴ LJC Committee, RoP [36-39], 17 January 2022

⁵ LJC Committee, RoP [40-41], 17 January 2022

⁶ LJC Committee, RoP [43], 17 January 2022

Legislative Activities

Following the Counsel General's evidence to us on 29 November 2021, we sought further information on legislative capacity and the accessibility of Welsh law in our letter of 3 December 2021.

In our letter to the First Minister of 10 December, we asked for the following information:

- Any resources within the draft budget to increase capacity within the Welsh Government to meet these legislative demands, including recruiting new staff, increasing expertise and retaining existing staff, and potentially buying-in, seconding or otherwise acquiring additional expertise.
- Any resources within the draft budget for delivery of the Welsh Government's programme for improving the accessibility of Welsh law.

In his response on the 10 January, the First Minister said that the Counsel General was writing to us separately on matters that include legislative capacity and the accessibility of Welsh law.

The Counsel General's letter of 17 January 2022 responded to our letter of 3 December, but did not address the issues we requested in our letter to the First Minister of 10 December and to which the First Minister had suggested the Counsel General would (at some point) be responding.

In the Counsel General's letter of 17 January, he made a comment that we consider to be of considerable constitutional significance and of relevance to fundamental democratic principles:

*"... there is a need for the Welsh Government to consider each UK Government Bill carefully, and to balance **the need to defend the current devolution settlement so far as possible** and the principle that we should legislate ourselves here in Wales, with **opportunities that may arise** to improve the law for citizens of Wales." [Our emphasis].*

This comment highlights why the information we requested on the how the Welsh Government is budgeting to ensure there is sufficient capacity to legislate is of such importance, particularly as regards the openness and transparency of how the *Programme for government*⁷ is to be implemented.

In his letter of 17 January, the Counsel General provided detailed information about the challenges of proposing primary legislation and making subordinate legislation currently faced by the Welsh Government, particularly as a consequence of leaving the EU and the coronavirus pandemic. We touched on these issues with the Counsel General in our evidence session on 17 January. The Counsel General also noted his role as Chair of the Cabinet committee on the legislative programme, saying

⁷ Welsh Government, Programme for government: update, December 2021

"of course we are looking very closely now at years two, three, and possibly beyond, of the legislative programme."⁸

Given that the function of legislating is fundamental to the role of the Senedd, as the Counsel General acknowledged,⁹ we would like to better understand the challenges faced but also how the Welsh Government proposes to address them.

Recommendation 8: In order to provide us with some baseline data, it would be helpful if the Welsh Government could provide details, for the current financial year of:

- a. the number of FTE staff it employs with a legal role;
- b. the number of FTE primary legislative drafting lawyers it employs;
- c. the number of FTE departmental lawyers that are employed and of those, how many either draft policy instructions for Bills or draft subordinate legislation;
- d. how many FTE staff have been involved in drafting subordinate legislation relating to EU exit and coronavirus regulations;
- e. how many other FTE staff, specialist or otherwise, are involved in the preparation of legislative proposals;
- f. a view on how the information provided in relation to a to e above compares to previous financial years;
- g. any other baseline data that the Welsh Government would deem to be useful.

Recommendation 9: It would be helpful if the Counsel General could set out how much resource is currently allocated to deal with the drafting of legislation relating to EU exit and coronavirus regulations.

Recommendation 10: In addition to providing the information requested in our letter to the First Minister of 10 December 2021, we would be grateful if the Counsel General could detail the resources he intends allocating and the programmes he will be introducing in the next financial year and subsequent financial years, to ensure that the Welsh Government has sufficient resource to deliver the Welsh Government's legislative programme and to address the challenges he identifies.

⁸ LJC Committee, [RoP 62], 17 January 2022

⁹ LJC Committee, [RoP 118], 17 January 2022

I am copying this letter to Jane Hutt MS, the Minister for Social Justice, the Equality and Social Justice Committee and the Finance Committee.

Yours sincerely,

Huw Irranca-Davies

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Chair

