



House of Commons
Public Administration Select
Committee

Future oversight of administrative justice: the proposed abolition of the Administrative Justice and Tribunals Council

**Twenty First Report of
Session 2010–12**

*Report, together with formal minutes, oral and
written evidence*

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The Public Administration Select Committee (PASC)

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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Summary

In October 2010, the Government's announced its intention to abolish the Administrative Justice and Tribunals Council (AJTC) as part of its programme of reform of public bodies. The process of abolishing the AJTC, through an Order under the Public Bodies Act 2011, will involve further Parliamentary scrutiny, and we intend that our report should inform that process.

This subject may seem obscure and technical, but it touches upon the lives, the standards of living, and rights of millions of citizens every year. Administrative justice includes decision-making in relation to matters such as individuals' taxes, benefits, child support and immigration rights. The AJTC is charged with keeping an enormous system under review, including internal complaints mechanisms as well as the tribunals which determine appeals on such matters.

Within the tribunal system alone, administrative justice hearings—650,000 per year—outnumber significantly the combined total of civil justice and criminal justice hearings and trials. The National Audit Office has estimated that there are 1.4 million cases processed through redress systems in central Government annually, at an annual cost of £510 million per year.

A high proportion of decisions made are overturned on appeal. This poor decision-making results in injustice to individuals and cost to the taxpayer on a scale that PASC finds unacceptable. The role of the AJTC in providing an independent overview of the system is therefore one of vital national importance.

The vast majority of the evidence we heard, except that from the Government, was opposed to the Ministry of Justice's plan to abolish the AJTC and absorb or abandon its functions. It is arguable whether or not the AJTC meets the Government's three criteria for deciding whether to retain a public body.

We agree with the Government that responsibility for the development of policy in relation to administrative justice properly lies with the Ministry of Justice (MoJ), but we do not share its view that this is a function currently duplicated by the AJTC. We also accept that some current functions of the AJTC have been taken over by Her Majesty's Courts and Tribunals Service. If the AJTC is retained, its functions will need to be reviewed and may need to be revised. The judgment for the House is not just whether the AJTC should be abolished, but also whether sufficient and appropriate provision has been made for the continued performance of any necessary functions that it previously carried out.

It is clear that there is a fundamental difference of view between the Government and others on both the need for independent oversight of the administrative justice system, and the extent to which the AJTC has been performing such a function. We accept that this task may be undertaken in more than one way, but consider that oversight by an entity independent from Government is valuable and should be continued in some form. The MoJ, as a part of Government, cannot replace these functions. If these are functions worth preserving, the Government will need to revisit its plans. Concerns were also raised about the resources and expertise which would be available within the MoJ, particularly as

substantial elements of the administrative justice system lie outside its current remit. PASC doubts the cost savings which the Government estimates will be achieved by the AJTC's abolition, which are in any case, a small fraction of what the Government should be aiming to save by getting more decisions right in the first place. We recommend that the MoJ should publish further information on these points to enable proper scrutiny of its proposals.

Finally, we recommend that, if the AJTC is abolished, the MoJ should, in the interests of continuing transparency, report annually to Parliament on the operation of the administrative justice system.

1 Introduction

1. The statutory functions of the Administrative Justice and Tribunals Council (AJTC) include keeping the administrative justice system under review, and considering ways to make the system accessible, fair and efficient.¹ These functions may seem obscure and technical, but they touch upon the lives, standards of living and rights of millions of citizens every year. Our remit includes consideration of the quality and standard of administration provided by government departments, and matters in connection with the office of the Parliamentary and Health Service Ombudsman (a key player in the administrative justice system and a body falling within the remit of the AJTC).²

2. Following the Government's announcement in October 2010 of its intention to abolish the AJTC as part of its programme of reform of public bodies, we decided to carry out a short inquiry into the Government's plans for future oversight of the administrative justice system. The inquiry was launched in October 2011. In November we took oral evidence from Richard Thomas and Ray Burningham, respectively Chairman and Chief Executive of the AJTC; and from Jonathan Djanogly MP, Parliamentary Under-Secretary of State for Justice, and Anna Deignan, Deputy Director, Access to Justice Directorate at the Ministry of Justice (MoJ).³ We also received ten written submissions.

3. We have been advised during this inquiry by Professor Martin Partington QC, Emeritus Professor of Law, University of Bristol. We are grateful to him for his assistance and insight.⁴

4. Under the Public Bodies Act 2011, the Government has the power to abolish the AJTC by Order. Before coming into force, the draft Order must be debated and approved by both Houses, and will also be considered by the House of Commons Justice Committee. The purpose of this Report is to inform that further scrutiny.

1 Tribunals, Courts and Enforcement Act 2007, Schedule 7, para 13

2 Standing Order No. 146

3 Ev 1

4 Professor Martin Partington QC was appointed as specialist adviser to this inquiry on 6 December 2011.

2 Role of the AJTC

5. The “administrative justice system”, as defined by the Tribunals, Courts and Enforcement Act 2007, comprises:

the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including:

- (a) the procedures for making such decisions,
- (b) the law under which such decisions are made, and
- (c) the systems for resolving disputes and airing grievances in relation to such decisions.⁵

It is generally understood as including the mechanisms by which individuals can challenge, question and seek to change decisions which central and local public bodies have made about them, in cases where there have been errors, misunderstandings or unacceptable standards of service. It includes complaint schemes operated by Government departments and other public bodies, ombudsmen, tribunals (both within the jurisdiction of the Courts and Tribunals Service and outside it) and the administrative court.⁶

6. Following the publication of the Franks Report on Administrative Tribunals and Enquiries in 1957, the Council on Tribunals was set up to “keep under review and report on the constitution and working of tribunals under its supervision and, where necessary, to consider and report on the administrative procedures of statutory inquiries”. The Council “sought to ensure that tribunals and inquiries met the needs of users through the provision of an open, fair, impartial, efficient, timely and accessible service”.⁷

7. The 2001 report on the tribunals system by Sir Andrew Leggatt (‘the Leggatt Report’) found that the Council on Tribunals, though undertaking important work on the independence and procedure of tribunals, had not exhibited sufficient strategic thought about the development of a system of administrative justice. It also observed that the Council had not published reports arising from the visits its members made to tribunals nor had it exposed many of the defects in tribunal operation which its members had identified. The report also found that the departments which were responsible for tribunals were unresponsive to criticism.⁸

8. Leggatt recommended that the Council be reconstituted to fill an “important new role”:

. . . to act as the hub of the wheel of administrative justice, or at any rate tribunal justice. Just as tribunals themselves cannot be expected to function properly without a Board, so the Council is needed to co-ordinate the arms of the system of administrative justice of which they are parts. The Council should monitor the

5 Schedule 7 paragraph 13

6 Ev 19

7 <http://www.council-on-tribunals.gov.uk/>

8 Report of the Review of Tribunals by Sir Andrew Leggatt: *Tribunals for Users - One System, One Service*, August 2001

development of the new Tribunals System during the first few years of its existence, and also check that the practices and procedures of Government departments are [European Convention on Human Rights] compliant. The Council should have as a primary duty the championing of the cause of users. To do this, it must include members with the experience and perspective of users.⁹

9. The majority of Leggatt's proposals were accepted by the Government in a White Paper in 2004.¹⁰ A Tribunals Service was established in 2006, comprising the 16 tribunals administered by the then Department for Constitutional Affairs and several tribunals which were administered by other departments.

10. The Tribunals, Courts and Enforcement Act 2007 created the post of Senior President of Tribunals, and provided the legal basis for the reshaping of tribunals and tribunal judiciary. In 2011, following administrative decisions taken by the government, the formerly separate HM Courts Service and the Tribunals Service were merged to create Her Majesty's Courts and Tribunals Service, an executive agency of the MoJ.

11. The 2007 Act also replaced the Council on Tribunals with the AJTC, constituted as an advisory non-departmental public body of the MoJ. The Act sets out a number of functions that the AJTC is required to perform, which go much wider than the focus on tribunals envisaged in the Leggatt Report. In addition to specific functions relating to tribunals and statutory inquiries, the Act provides that the Council is to:

- a) keep the administrative justice system under review,
- b) consider ways to make the system accessible, fair and efficient,
- c) advise [Ministers] on the development of the system,
- d) refer proposals for changes in the system to those persons, and
- e) make proposals for research into the system.¹¹

12. In relation to tribunals, the AJTC has a statutory duty to keep under review, and report on, the constitution and working of the tribunals within its jurisdiction (generally and individually). It may also comment on legislation affecting tribunals, including procedural rules. Its members also have the right, formerly held by members of the Council on Tribunals, to attend and observe any tribunal proceeding, even when held in private or in a format other than a 'hearing'. Similar functions are prescribed in relation to statutory inquiries.

13. The 2007 Act provides for the Council to have between 10 and 15 members, plus the Parliamentary Commissioner for Administration who is an *ex officio* member. The Lord Chancellor, Welsh Ministers and Scottish Ministers may each appoint either two or three members. Members are paid, and are appointed after an open and transparent recruitment process which complies with the Code of Practice of the Office of the Commissioner for

9 Sir Andrew Leggatt *Tribunals for Users: One System, One Service* (2001) paragraph 7.49

10 *Transforming Public Services: Complaints, Redress and Tribunals*, Cm 6243, July 2004

11 See Schedule 7 to the Act.

Public Appointments.¹² The Council is supported by a secretariat made up of staff seconded from the Ministry of Justice and the Scottish Government.¹³ Its annual budget in 2010–11 was just over £1.3 million.¹⁴

14. Because of the nature of the administrative justice system, the potential scope of the AJTC's activities is considerably broader than other bodies overseeing the operation of other elements of the judicial system, such as the Family Justice Council and Civil Justice Council.

15. This point was illustrated in a recent lecture by the then Parliamentary and Health Service Ombudsman, Ann Abraham:

Administrative justice can sometimes seem the poor relation by comparison with the civil, criminal and family justice regimes. Yet citizens are just as likely, if not more likely, to come across administrative justice issues in their ordinary lives than civil or even family justice issues. The outcomes of decision making by a wide-range of public bodies on a daily basis affect family incomes, jobs, healthcare, housing, education and much, much more.

To illustrate the point – in 2010 in England and Wales:

- There were around 63,000 hearings/trials dealing with civil justice matters;
- There were over 200,000 criminal justice hearings/trials;
- There were over 650,000 administrative justice hearings – of which over 275,000 were about social security and child support.¹⁵

16. In oral evidence, Richard Thomas, the Chairman of the AJTC, estimated the total number of cases going through the wider administrative justice system, including cases handled by ombudsmen and other forms of dispute resolution, at “probably about a million cases a year”. He said that appeals and complaints represent “just the tip of the iceberg” of the tens of millions of decisions affecting citizens each year, at a cost which is unquantifiable.¹⁶

17. The AJTC has noted the high proportion of successful appeals against decisions made in central Government:

in 2009-2010, 38 per cent of appeals made to the Social Security and Child Support tribunal were upheld, and in 2010 on average 27 per cent of appeals against the UK Border Agency were upheld ... Evidence also suggests that appeal success rates are even higher for appellants with legal representation.¹⁷

12 Ev 34

13 Administrative Justice and Tribunals Council *Annual Report 2010/11* (November 2011) page 42

14 Ev 35

15 *The Parliamentary Ombudsman and Administrative Justice, Shaping the next 50 years*, JUSTICE Tom Sargant memorial annual lecture 2011, 13 October 2011

16 Q 3

17 Administrative Justice and Tribunals Council *Right first time* (June 2011), paragraphs 28–29

18. PASC regards the high level of successful appeals and complaints against decisions by government departments as an indication of widespread administrative failure. Government should aim to produce decisions which are right first time and command a high degree of confidence. The scale of the injustice and the cost to the taxpayer caused by this poor decision-making are wholly unacceptable. We expect the Government to echo this view in their response. We also therefore regard the role of the AJTC as one of vital national importance, overseeing a system that protects the rights of millions of citizens every year.

3 Proposal to abolish the AJTC

19. The Public Bodies Act 2011 received Royal Assent on 14 December 2011. It contains provisions giving the Government the power to abolish, merge or change the functions of certain public bodies by secondary legislation. The AJTC is listed in Schedule 1 to the Act as a body which Ministers may, by Order, abolish.

20. In preparing the lists of bodies to be included in the Schedules to the Act, the Government carried out an extensive review of existing public bodies, “underpinned by the principle that it is up to departments to carry out policy, and this should not be duplicated elsewhere”.¹⁸ As the Minister has explained:

In reviewing the Ministry of Justice’s public bodies, we looked at the functions those bodies undertook, whether the functions needed to continue and if so, who should carry them out. [...] As part of that review three tests were applied to each body to assess whether it, as a public body, remain[ed] the right delivery mechanism:

- Is the body needed in order to perform a technical function?
- Does the body need to be politically impartial?
- Is the body needed to act independently in order to establish facts?

The AJTC did not meet any of the tests. Administrative justice policy is the function of the Ministry of Justice, and the oversight and development of administrative justice should stay with the Department.¹⁹

21. As required by the Act, the MoJ ran a 12-week public consultation on the future of the public bodies it sponsors, including the proposal to abolish the AJTC. The public consultation closed on October 11 2011, and the Government published its response on 15 December. The Ministry received 41 responses in relation to the AJTC.

22. A majority of the respondents, including the Parliamentary and Health Service Ombudsman, opposed the abolition. Responses drew particular attention to the AJTC’s strength as “an independent organisation that exercises a UK wide overview of the administrative justice system”, its role as a forum for bringing together disparate parts of the administrative justice system, and its function of representing the interests of users of the system.²⁰ A majority were also concerned that functions of the AJTC could not be adequately covered by the Ministry.

23. Four responses were “not opposed” to the abolition, of which one actively supported the proposal as a “logical step” after the formation of the combined Courts and Tribunals Service.²¹

18 Ev 36

19 *Ibid.*

20 *Response to consultation on reforms proposed in the Public Bodies Bill*, Ministry of Justice, December 2011, page 10

21 As above, page 11

24. The Scottish Government was content with the proposed abolition. The Welsh Government (which is currently engaged in a programme of tribunal reforms) expressed a preference for “for the AJTC to continue, in respect of the functions it exercises in Wales, until such time its programme of tribunal reform is at a sufficiently advanced stage”.²²

25. The MoJ disagreed with the concerns expressed by respondents to its consultation, and has decided to proceed with the abolition of the AJTC, stating:

The AJTC is an advisory body whose functions are either no longer required or – in the case of its policy functions – are more properly performed by Government itself ... The AJTC’s functions are no longer required due to the establishment of a unified tribunal system within HMCTS [Her Majesty’s Courts and Tribunals Service] which is committed to providing timely and effective access to justice to users. The department itself is capable of providing the required oversight of the administrative justice system and its officials can provide Ministers with the impartial, balanced, objective and expert advice necessary to develop effective policy in this area.²³

...

The Government remains committed to abolishing the AJTC by an order under the Public Bodies Bill. It believes that an advisory body is no longer required in the field of administrative justice as robust governance and oversight arrangements [are] now in place with regard to tribunals and the development of administrative justice policy is properly a function of Government [...] The abolition of the AJTC will have no direct impact on judicial independence or judicial decision-making; the AJTC is not a tribunal or any other form of judicial body. Nor does it have any inspectorate functions.

The Government is committed to ensuring that it exercises effective oversight of the administrative justice system in a way that best serves users. It will seek to develop, maintain and enhance a UK perspective of the system as well as enhancing its links with stakeholders. The Government will ensure that there are channels by which best practice can be shared and collaborative working developed.²⁴

26. We understand that the Government intends to lay the draft Order abolishing the AJTC before Parliament in Spring 2012.²⁵ It is expected to come into force in Summer 2012.²⁶

27. The Government has argued that the AJTC fails to meet its three criteria for deciding whether to retain a public body. But it could be, and has been, argued that the AJTC in fact meets all three of them: that it is “needed in order to perform a technical function”; that it benefits from being “politically impartial”; and that it is “needed to act independently in order to establish facts” about the administrative justice system.

22 *Response to consultation on reforms proposed in the Public Bodies Bill*, Ministry of Justice, December 2011, page 1

23 As above, page 15

24 As above, page 18

25 HC Deb 10 October 2011 c155W

26 Ev 32

4 Consequences of abolishing the AJTC

28. The MoJ proposes bringing what it describes as the “policy functions” of the AJTC ‘in house’, to be performed by civil servants in the Access to Justice Directorate.²⁷ The Department is “developing a strategy and programme of work with regard to the oversight of administrative justice”. It also proposes to establish a “group of administrative justice experts and key stakeholders—particularly those who represent the views of users” to “provide a valuable forum for sharing information and best practice, and [...] to test policy ideas”. We understand that this user group is likely to include some former members of the AJTC.²⁸ **We recommend that the Government provide further information on its proposals for the membership and operation of this group of experts and key stakeholders.**

29. Of those who submitted written evidence to us, all but the MoJ itself expressed concerns about the proposal that the Department should take over functions of the AJTC. The Council for Justice described the plans as “a source of some anxiety to all who have an interest in good government”,²⁹ while the Public and Commercial Services Union (PCS), which represents “staff across a number of grades in the AJTC” expressed particular concerns around the resources that would be available within the MoJ, and the potential conflict of interest in making the MoJ “its own watchdog”.³⁰

30. Dr Jeff King of University College London wrote that:

First, [...] the AJTC’s functions are essential to the system of administrative justice. Second, [...] there is no evidence at all that the MoJ could perform those tasks any more cheaply, or that the AJTC is not delivering value for money. Third, there is good reason to believe that the MoJ would not carry out those essential functions as effectively as the AJTC.³¹

31. Brian Thompson, Senior Lecturer in the School of Law at the University of Liverpool, and a member of the AJTC, wrote:

I suggest that the Ministry of Justice in its proposal to abolish that ATJC has been focussing on an institution rather than roles and functions. I further suggest that the Ministry’s proposed arrangements following abolition are inadequate to deal properly with these roles and functions and thus impair the achievement of an accessible, fair and efficient administrative justice system.³²

This view was shared by the then Parliamentary and Health Service Ombudsman, Ann Abraham (an *ex officio* member of the AJTC) who informed us that, in her opinion “the

27 *Response to consultation on reforms proposed in the Public Bodies Bill*, p 15

28 Ev 32

29 Ev 39

30 Ev 30–31

31 Ev 27

32 Ev 24

abolition of the AJTC is a regressive step and that the Ministry of Justice is not equipped to provide the oversight role that the AJTC has performed”.³³

32. Richard Thomas, the current Chair of the AJTC, said “Frankly, we are deeply sceptical that the Ministry of Justice could, should or would—I use those words advisedly—take over our functions”.³⁴

Resources and expertise

33. Richard Thomas told the Committee that he had “grave anxieties” about the lack of experience and expertise on administrative justice matters within the MoJ. He said:

We do not know exactly how many staff there are working on this area in MoJ. We believe it is more or less like three or four full-time people, but that team really only started about six months ago. [...] A team was put in place; they disappeared to other, higher priority areas. A new team started about three or four months ago, and we were told just last week [...] that all three or four people working in this area will be gone. [...] There has been a very high turnover, and a completely new team will be arriving in the coming weeks, and we do worry very much about whether the MoJ will have not just the expertise and depth of knowledge but also the contacts and networks that you need to understand the system.³⁵

34. The Minister told us that there would be twelve staff working on administrative justice issues. We also heard that the recent high staff turnover in the Directorate was due to the Ministry’s ongoing Change Programme to reduce headcount.³⁶ However, Anna Deignan, the Deputy Director of the Access to Justice Directorate, told us that a team of 12 staff would be up to full strength by the end of 2011 and that “our core expertise will remain”.³⁷

35. Alongside the draft Order to abolish the AJTC, the Ministry of Justice must make available further information about the number, turnover and expertise of the civil servants who would become responsible for taking on the AJTC’s functions, and provide verifiable assurances about staffing plans in this area for the foreseeable future.

Independence and oversight of the administrative justice system

36. One role of the AJTC is to “keep the administrative justice system under review” and make proposals to Ministers on how the system can be improved. The MoJ and AJTC have different understandings of this role.

37. The MoJ takes the “firm view” that:

the development of administrative justice policy is properly the function of Government. An advisory body working in this area means duplication of effort and

33 Ev 25

34 Q 2

35 Q 36

36 Qq 36 (Richard Thomas) and 87

37 Qq 86–87

resources. While the AJTC is an arm's length body, the Government's view is that independence in this sense is not a prerequisite for policy advice on administrative policy, just as it is not for any other policy area; officials, working in close consultation with stakeholders, can provide Ministers with balanced, objective and expert advice.³⁸

38. Recent reforms have sought to rationalise the tribunals system by standardising procedural rules and moving the administration of individual tribunals away from the government departments and agencies whose decisions they consider. The Government takes the view that increasing the independence of tribunals from their original parent department in this way reduces the need for independent oversight of their activities.³⁹

39. In contrast, Richard Thomas emphasised that the AJTC was not aiming to develop government policy:

We can recommend, we can advise, we can float ideas for improving the system. It is then for the civil servants at the MoJ to advise the Minister which ones to pursue, and which not to pursue.⁴⁰

He took particular issue with a statement made by the MoJ in its consultation paper on the Council's abolition:

Fundamentally, we do not really understand what is meant by [the MoJ's] claim that 'effective governance arrangements ... between HMCTS and the Department [mean] that the AJTC's oversight role in relation to tribunals is no longer required'. HMCTS is the administration that supports the tribunals and the courts. They ... are providing the system. Our role is to provide the independent challenge and feedback [...]. We are sceptical that HMCTS can [...] oversee itself, and secondly it does not have oversight of the system as a whole; it is only concerned with the delivery of court and tribunal services.⁴¹

40. Mr Thomas' view was shared by Ann Abraham, who argued that "the fact that the Ministry is a government department means that, by definition, it lacks the essential independence of judgment and freedom of action to challenge policy proposals as enjoyed by the AJTC".⁴²

41. When asked about the AJTC's role in observing and scrutinising tribunals (some of which remain outside the unified Courts and Tribunals Service, under the control of government departments other than the MoJ) the Minister argued that the AJTC's "independent oversight of tribunals has been very limited indeed. In respect of planning tribunals they have a statutory role, but other than that it is a pretty hit and miss affair, I

38 Ev 30

39 Q 120

40 Q 41

41 Q 25, quoting Ministry of Justice *Consultation on reforms proposed in the Public Bodies Bill Reforming the public bodies of the Ministry of Justice* (July 2011) paragraph 34

42 Ev 26

would suggest.”⁴³ In contrast, the AJTC described its staff as “assiduous” in feeding findings from their attendance at tribunal hearings back into the system.⁴⁴

42. The Government believes that some of the AJTC’s functions need not be carried out following its abolition.⁴⁵ Others have already been replaced. (For example, the Courts and Tribunals Service provides considerable amounts of data about the functioning of the Service, and the Annual Reports of the Senior President of Tribunals address some of the wider issues associated with the operation of tribunals.)

43. Separately, a number of other changes are proposed to elements of the administrative justice system which are outside the current remit of the MoJ, including:

- the White Paper on Open Public Services, published by the Cabinet Office, indicated that there might need to be new ombudsmen and new roles for ombudsmen.⁴⁶
- the Law Commission has recently called for the Government to establish a wide-ranging review of the public services ombudsmen and their relationship with other institutions for administrative redress, such as courts and tribunals.⁴⁷

Developments in the use of information and communications technology also have the potential to reduce costs and prove more efficient in delivering services to clients than traditional administrative justice processes. The breadth of the administrative justice system, and its direct relevance to the lives of ordinary citizens, make it all the more important to take a coherent and user-oriented approach to reform.

44. We agree that responsibility for the development of government policy in relation to administrative justice properly lies with the MoJ (although we do not share the MoJ’s view that this is a function currently duplicated by the AJTC). We also accept that the creation of the new Courts and Tribunals Service means that many of the specific functions of the AJTC, in particular in relation to tribunals, have been taken over by the Tribunals Service. If the AJTC is retained, its functions will need to be reviewed and may need to be revised.

45. It is clear that there is a fundamental difference of view between the Government and others from whom we have heard on both the need for independent oversight of the administrative justice system, and the extent to which the AJTC has been performing such a function. We accept that this task may be undertaken in more than one way, but consider that oversight by an entity independent from Government is valuable and should be continued in some form. This should be a key consideration in deciding whether or not the AJTC should be abolished.

43 Q 77

44 Ev 20

45 See paragraph 25.

46 Cabinet Office, Open Public Services White Paper, Cm 8145, July 2011 paragraph 3.26

47 Law Commission, *Public Services Ombudsmen*, HC1136, July 2011 Recommendation 1

Cost savings

46. The MoJ believes that “containing administrative justice policy within the Department will provide greater value for money”.⁴⁸ The annual budget of the AJTC in 2010–11 was just over £1.3 million,⁴⁹ of which a little more than £400,000 resulted from staff costs, paid to civil servants seconded from the MoJ and Scottish Government.⁵⁰ The budget of the AJTC is significantly greater than those of the Civil Justice Council (£68,000 in 2010–11) and the Family Justice Council (£95,000 excluding staff costs, plus £145,000 for local training), neither of which is proposed for abolition. It may help to provide some context to the cost of these oversight bodies to point out that in 2010–11 the cost of administering the tribunals within the responsibility of the Ministry of Justice was £336 million.

47. The Impact Assessment published by the MoJ estimates that abolishing the AJTC will achieve savings of approximately £4.6 million by 2015. This figure is based on the assumption that the AJTC’s annual budget would have been maintained and increased with inflation over the course of the period. The costs of redundancy or early retirement payments to any MoJ staff who are not redeployed are estimated at around £600,000. Rental costs of £100,000 per annum until 2013 are, and will continue to be, borne by the MoJ centrally unless the space can be sublet.⁵¹

48. In its submission to the inquiry, the AJTC argued that the likely gross savings would be closer to £2 million, saying “we do not understand how [the MoJ estimate] is calculated”.⁵² It also drew attention to the savings (in avoided costs), that its work promoted, saying:

The AJTC recognises that the UK currently faces a period of austerity and that the government is reducing public spending in real terms. This makes it especially important to save money by reducing the need for costly appeals and complaints. It is equally important that decisions taken to achieve cost savings in the area of administrative justice actually achieve this goal, while avoiding unintended and deleterious effects on individual rights and legitimate expectations. For example, cuts in legal aid and the provision of advice services are likely to reduce access to justice for individuals, result in fewer unmeritorious cases being weeded out and prolong cases which do proceed. Unresolved disputes may also generate greater costs both for individuals and families and ultimately for government and the taxpayer. This is especially important in times of economic and social uncertainty when it is vital to have acceptable arrangements for the redress of grievances.⁵³

49. Neither the MoJ’s impact assessment, nor the AJTC itself, offers any quantitative estimate of the scale of these avoided costs. However, a report by the National Audit Office on ‘Citizen Redress’ in 2005 found that:

48 Ev 37

49 Ev 35

50 Administrative Justice & Tribunals Council *Annual Report 2010/2011* (November 2011) Appendix B

51 Ministry of Justice *Impact Assessment for the Abolition of the Administrative Justice and Tribunals Council* (27 June 2011, updated after July 2011) pages 6–7

52 Ev 38

53 Ev 20

nearly 1.4 million cases are received through redress systems in central Government annually and are processed by over 9,300 staff and at an annual cost of at least £510 million. Appeals and tribunal cases account for just under three fifths of the redress load, seven tenths of the annual costs and two thirds of the staff numbers. Complaints are much cheaper to handle, accounting for two in five redress cases but an eighth of the annual costs.

...

Cutting down the initial numbers of complaints or appeals, resolving more complaints and appeals more speedily and pro-actively, and improving the cost efficiency of current redress arrangements, could all make appreciable savings in public money, savings which could then cumulate with every passing year. If reductions of 5 per cent could be made in the current costs of redress systems, we estimate from our research that the Exchequer would save at least £25 million per year less the cost of implementation.⁵⁴

50. The Minister accepted that, if staff from the AJTC were redeployed within the MoJ, savings in the MoJ budget would not necessarily represent a net saving to the taxpayer.⁵⁵ He explained that the eventual net saving would be unclear until all decisions had been taken regarding redeployment of staff, and any redundancy or early retirement costs were known,⁵⁶ though he emphasised that “I cannot see how it would cost the taxpayer more money. It could only be less.”⁵⁷

51. The Government estimates that abolition of the AJTC could save approximately £4.6 million by 2015, but this assumes that the AJTC would not be required to reduce costs and improve efficiency like other public bodies . We also suspect that the full cost of carrying out these functions within the MoJ has been underestimated. We therefore doubt this estimate. The Government should provide a more detailed estimate, which addresses these points before asking Parliament to approve an abolition Order.

52. The annual cost of the AJTC is a tiny fraction of that estimated by the NAO in 2005 as resulting from the 1.4 million cases received through redress systems in central Government: £510 million.⁵⁸ Improving the cost of current redress arrangements by as little as five per cent would save more than five times the Government’s most optimistic estimate of savings to be derived from the abolition of the AJTC. **The proposal to abolish the AJTC makes it all the more clear that the Government’s priority should be to improve its own decision-making and redress systems. We recommend that the Government set out plans to achieve this improvement. This is an area into which we will inquire in depth during this Parliament.**

54 National Audit Office *Citizen Redress: What citizens can do if things go wrong with public services* HC 21 Session 2004–2005 paragraphs 12 and 16. This report also noted that government departments “do not collect systematic information on complaints, and many others have only partial or incomplete data”.

55 Q 101

56 Qq 90–100

57 Q 103

58 National Audit Office *Citizen Redress: What citizens can do if things go wrong with public services* HC 21 Session 2004–2005, page 4

5 Conclusion

53. Our concern is with the quality and standard of administration within the civil service, and the need to ensure that citizens can access the support, advice and redress to which they are entitled. We wholeheartedly endorse the case, put by both the AJTC and the Parliamentary and Health Service Ombudsman,⁵⁹ for Government to get its decisions ‘right first time’, but this is a goal which is currently missed far too often. When it is missed, robust systems are necessary to ensure that those individuals affected have the opportunity to put things right.

54. The Government acknowledges that its decision to abolish the AJTC should “not reflect on the quality of the work [it] has done”⁶⁰ and recognises the need “to retain the best of what the AJTC has to offer”.⁶¹ **The judgment for the House when the draft Order is laid is not just whether the AJTC should be abolished, but also whether sufficient and appropriate provision has been made for the continued performance of any necessary functions previously carried out by the AJTC. If it is retained or a successor body established, then it will be necessary to review its functions in order to improve its effectiveness. Either way, the Government’s objective must be to achieve substantial improvements in both administrative justice and savings in public expenditure. This can only come from reducing the number of administrative decisions wrongly made in the first place.**

55. As a government department, the MoJ’s thinking and decisions will inevitably be constrained by the need to reflect Government policy and budgetary constraints. The AJTC has provided an independent overview of the administrative justice system from outside these constraints. One key question for the House is whether this independent overview continues to be required. Its characteristics include:

- A user-centred perspective on the administrative justice system
- Independent scrutiny and observation of tribunal/inquiry hearings
- The ability to report publicly, in an independent and fearless way, on issues affecting the administrative justice system, and Government proposals affecting it.

The MoJ, as a part of Government, cannot replace these functions. If these are functions worth preserving, the Government will need to revisit its plans.

56. **The MoJ’s current interest in the administrative justice system does not cover the full breadth of the AJTC’s remit. We have also heard concerns about the MoJ’s staffing complement, turnover and expertise. The other key question for the House is whether**

59 Administrative Justice and Tribunals Council *Right first time* (June 2011) and Parliamentary and Health Service Ombudsman *Responsive and Accountable?: The Ombudsman’s review of complaint handling by government departments and public bodies 2010–11* (October 2011)

60 Ev 37

61 Q 58

the MoJ is therefore adequately resourced to provide the policy functions currently carried out by the AJTC, in particular:

- **Provision to Ministers of detailed technical advice by experienced practitioners on the operation of all parts of the administrative justice system, including those which fall outside the MoJ's responsibilities**
- **Oversight of the administrative justice system as a whole including ombudsmen, tribunals outside HMCTS, and alternative dispute resolution mechanisms, across England, Wales and Scotland.**

57. If the decision is taken to abolish the AJTC, we recommend that, in the interests of continuing transparency, the MoJ report annually to Parliament on the operation of the administrative justice system, including:

- **Details of the resourcing of the Department's administrative justice function**
- **Actions taken by Ministers and officials to improve the operation of the system**
- **Details of how the views of users of the administrative justice system have been sought and addressed**
- **Details of work undertaken with other Departments, devolved administrations and local government, to improve administrative justice for the citizen.**

Conclusions and recommendations

Role of the AJTC

1. PASC regards the high level of successful appeals and complaints against decisions by government departments as an indication of widespread administrative failure. Government should aim to produce decisions which are right first time and command a high degree of confidence. The scale of the injustice and the cost to the taxpayer caused by this poor decision-making are wholly unacceptable. We expect the Government to echo this view in their response. We also therefore regard the role of the AJTC as one of vital national importance, overseeing a system that protects the rights of millions of citizens every year. (Paragraph 18)

Proposal to abolish the AJTC

2. The Government has argued that the AJTC fails to meet its three criteria for deciding whether to retain a public body. But it could be, and has been, argued that the AJTC in fact meets all three of them: that it is “needed in order to perform a technical function”; that it benefits from being “politically impartial”; and that it is “needed to act independently in order to establish facts” about the administrative justice system. (Paragraph 27)

Consequences of abolishing the AJTC

3. We recommend that the Government provide further information on its proposals for the membership and operation of this group of experts and key stakeholders. (Paragraph 28)

Resources and expertise

4. Alongside the draft Order to abolish the AJTC, the Ministry of Justice must make available further information about the number, turnover and expertise of the civil servants who would become responsible for taking on the AJTC’s functions, and provide verifiable assurances about staffing plans in this area for the foreseeable future. (Paragraph 35)

Independence and oversight of the administrative justice system

5. We agree that responsibility for the development of government policy in relation to administrative justice properly lies with the MoJ (although we do not share the MoJ’s view that this is a function currently duplicated by the AJTC). We also accept that the creation of the new Courts and Tribunals Service means that many of the specific functions of the AJTC, in particular in relation to tribunals, have been taken over by the Tribunals Service. If the AJTC is retained, its functions will need to be reviewed and may need to be revised. (Paragraph 44)
6. It is clear that there is a fundamental difference of view between the Government and others from whom we have heard on both the need for independent oversight of the

administrative justice system, and the extent to which the AJTC has been performing such a function. We accept that this task may be undertaken in more than one way, but consider that oversight by an entity independent from Government is valuable and should be continued in some form. This should be a key consideration in deciding whether or not the AJTC should be abolished. (Paragraph 45)

Cost savings

7. The Government estimates that abolition of the AJTC could save approximately £4.6 million by 2015, but this assumes that the AJTC would not be required to reduce costs and improve efficiency like other public bodies. We also suspect that the full cost of carrying out these functions within the MoJ has been underestimated. We therefore doubt this estimate. The Government should provide a more detailed estimate, which addresses these points before asking Parliament to approve an abolition Order. (Paragraph 51)
8. The proposal to abolish the AJTC makes it all the more clear that the Government's priority should be to improve its own decision-making and redress systems. We recommend that the Government set out plans to achieve this improvement. This is an area into which we will inquire in depth during this Parliament. (Paragraph 52)

Conclusion

9. The judgment for the House when the draft Order is laid is not just whether the AJTC should be abolished, but also whether sufficient and appropriate provision has been made for the continued performance of any necessary functions previously carried out by the AJTC. If it is retained or a successor body established, then it will be necessary to review its functions in order to improve its effectiveness. Either way, the Government's objective must be to achieve substantial improvements in both administrative justice and savings in public expenditure. This can only come from reducing the number of administrative decisions wrongly made in the first place. (Paragraph 54)
10. The MoJ, as a part of Government, cannot replace the AJTC's functions in providing an independent overview of the administrative justice system. If these are functions worth preserving, the Government will need to revisit its plans. (Paragraph 55)
11. The MoJ's current interest in the administrative justice system does not cover the full breadth of the AJTC's remit. We have also heard concerns about the MoJ's staffing complement, turnover and expertise. The other key question for the House is whether the MoJ is therefore adequately resourced to provide the policy functions currently carried out by the AJTC, in particular:
 - Provision to Ministers of detailed technical advice by experienced practitioners on the operation of all parts of the administrative justice system, including those which fall outside the MoJ's responsibilities

- Oversight of the administrative justice system as a whole including ombudsmen, tribunals outside HMCTS, and alternative dispute resolution mechanisms, across England, Wales and Scotland. (Paragraph 56)
12. If the decision is taken to abolish the AJTC, we recommend that, in the interests of continuing transparency, the MoJ report annually to Parliament on the operation of the administrative justice system, including: Details of the resourcing of the Department's administrative justice function.
- Actions taken by Ministers and officials to improve the operation of the system
 - Details of how the views of users of the administrative justice system have been sought and addressed
 - Details of work undertaken with other Departments, devolved administrations and local government, to improve administrative justice for the citizen. (Paragraph 57)

Formal Minutes

Tuesday 21 February 2012

Members present:

Mr Bernard Jenkin, in the Chair

Charlie Elphicke
Paul Flynn
Robert Halfon
David Heyes

Kelvin Hopkins
Greg Mulholland
Lindsay Roy

Draft Report (*Future oversight of administrative justice: the proposed abolition of the Administrative Justice and Tribunals Council*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 57 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Twenty First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Wednesday 22 February at 12.45 pm]

Witnesses

Tuesday 22 November 2011

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Richard Thomas CBE , Chairman, Administrative Justice and Tribunals Council and Ray Burningham , Chief Executive, Administrative Justice and Tribunals Council	Ev 1
Jonathan Djanogly MP , Parliamentary Under-Secretary of State, Ministry of Justice and Anna Deignan , Deputy Director, Access to Justice Directorate, Justice Policy Group, Ministry of Justice	Ev 10

List of printed written evidence

1	Administrative Justice and Tribunals Council (OAJ 01)	Ev 19
2	Brian Thompson (OAJ 02)	Ev 23
3	Dr Richard Kirkham (OAJ 03)	Ev 24
4	Parliamentary and Health Service Ombudsman (OAJ 04)	Ev 25
5	Dr Jeff King (OAJ 06)	Ev 27
6	Ministry of Justice (OAJ 07)	Ev 29
7	Public and Commercial Services Union (OAJ 08)	Ev 30
8	Supplementary written evidence from Ministry of Justice (OAJ 09)	Ev 32
9	Supplementary written evidence from Administrative Justice and Tribunals Council (OAJ 10)	Ev 37
10	Centre for Justice (OAJ 11)	Ev 39

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

First Report	Who does UK National Strategy?	HC 435 (HC 713)
Second Report	Government Responses to the Committee's Eighth and Ninth reports of Session 2009-10	HC 150
Third Report	Equitable Life	HC 485 (Cm 7960)
Fourth Report	Pre-appointment hearing for the dual post of First Civil Service Commissioner and Commissioner for Public Appointments	HC 601
Fifth Report	Smaller Government: Shrinking the Quango State	HC 537 (Cm 8044)
Sixth Report	Who Does UK National Strategy? Further Report with the Government Response to the Committee's First Report of Session 2010-11	HC 713
Seventh Report	Smaller Government: What do Ministers do?	HC 530 (HC 1540)
Eighth Report	Cabinet Manual	HC 900 (HC 1127, Cm 8213)
First Special Report	Cabinet Manual: Government Interim Reponse to the Committee's Eighth Report of Session 2010-12	HC 1127
Ninth Report	Pre-appointment hearing for the post of Parliamentary and Health Service Ombudsman	HC 1220-I
Tenth Report	Remuneration of the Parliamentary and Health Service Ombudsman	HC 1350
Eleventh Report	Good Governance and Civil Service Reform: 'End of Term' report on Whitehall plans for structural reform	HC 901 (HC 1746)
Twelfth Report	Government and IT — "a recipe for rip-offs": time for a new approach	HC 715-I (HC 1724)
Thirteenth Report	Change in Government: the agenda for leadership	HC 714 (HC 1746)
Fourteenth Report	Public Appointments: regulation, recruitment and pay	HC 1389
Fifteenth Report	Smaller Government: What do Ministers do? Further Report	HC 1540 (HC 1746)
Sixteenth Report	Appointment of the Chair of the UK Statistics Authority	HC 910
Seventeenth Report	The Big Society	HC 902
Eighteenth Report	Change in Government: the agenda for leadership: Further Report, with the Government Responses to the Committee's Eleventh, Thirteenth and Fifteenth Reports of Session 2010-12	HC 1746
Nineteenth Report	Leadership of change: new arrangements for the roles of the Head of the Civil Service and the Cabinet Secretary	HC 1582

Twentieth Report

Government and IT-“a recipe for rip-offs”: time for a new approach: Further Report, with the Government response to the Committee’s Twelfth Report of Session 2010-12

HC 1724

Oral evidence

Taken before the Public Administration Committee

on Tuesday 22 November 2011

Members present:

Mr Bernard Jenkin (Chair)

Alun Cairns
Charlie Elphicke
Paul Flynn

David Heyes
Kelvin Hopkins
Greg Mulholland

Examination of Witnesses

Witnesses: **Richard Thomas CBE**, Chairman, and **Ray Burningham**, Chief Executive, Administrative Justice and Tribunals Council, gave evidence.

Q1 Chair: Welcome to our two witnesses. I wonder if you could each identify yourselves for the record?

Richard Thomas: Good morning, Chairman. I am Richard Thomas. I am the Chairman of the Administrative Justice and Tribunals Council, and on my left is Ray Burningham, who is the Chief Executive.

Q2 Chair: Thank you for joining us this morning. I think you wanted to make a few opening remarks?

Richard Thomas: Thank you, Chairman. We have submitted a quite substantial submission to your Committee. We very much welcome the inquiry that your Committee has convened, and our submission runs to about six pages. We have annexed to it all of the reports we have published over the last year or so, and I would be very happy to elaborate on any of those this morning. This inquiry brings the spotlight not just on the AJTC but the administrative justice system as a whole, sometimes called the Cinderella both of public administration and of the machinery of justice. Clearly our prospective abolition is the main focus of your inquiry today. Our feelings are primarily those of puzzlement and frustration.

Our job is, and indeed has been since 1957 when the Council on Tribunals was established, to provide an overview of the entire system for public sector decision making, complaints and appeals as it impacts on the lives of ordinary citizens across the United Kingdom as a whole, and to put forward suggestions for improving that system. Much remains to be done to improve the accessibility, the fairness, and the efficiency of the system: in shorthand, better justice at lower cost. These are our statutory criteria. There are momentous changes and challenges right now and for the next few years across this system. The track record of the AJTC, the expertise, experience and commitment of our members and secretariat, and most importantly our independence, would seem to be of crucial importance to a Government that needs to make significant changes to the part of the justice system where it, the Government, is actually a party to most disputes.

Frankly, we are deeply sceptical that the Ministry of Justice could, should or would—I use those words advisedly—take over our functions. But we do believe that there is considerable scope for our Council and

the MoJ to work more closely to secure worthwhile improvements. With so much current emphasis on improving public services, on the needs of users, on empowering people, on fairness and on upholding the rule of law, it seems to us misguided to abolish a well-established, well-respected and well-connected body, which at almost minuscule cost to the public purse is uniquely well placed to improve the system from the perspective of the user. Thank you, Chairman. That was the opening statement I wished to make.

Q3 Chair: Thank you very much. You may have answered some of our questions already. When the Council was originally established, or recommended, by the Leggatt Report in 2001, it was about coordinating the arms of administrative justice, of which they are parts. Hasn't that largely been achieved by the 2007 Act? Hasn't the Council therefore done its work?

Richard Thomas: Well, as you imply, Chairman, the Council was reconstituted. The old Council on Tribunals had been going since 1957. The Leggatt Report led to a White Paper, which led to the Tribunals, Courts and Enforcement Act 2007, and integrating the tribunals was just one part of that. If I can just quote one paragraph from the Leggatt Report itself, he said what is needed is to ensure that "there are fair, timely, proportionate and effective arrangements for handling those disputes, within an effective framework for decision making which ... forms a coherent structure ... for the delivery of administrative justice," and what I think the reforms recognised at that time is that the tribunals were really just the tip of a very large iceberg.

We reckon that perhaps about 650,000 cases a year are now going through just the tribunals that now fall under the scope of HMCTS, the Courts and Tribunals Service. There are more going to tribunals at local level and to tribunals that fall outside that system. There are yet more going to ombudsmen and other forms of dispute resolution. Probably about a million cases a year, which is a massive amount, are going through these various systems. But that is just the tip of the iceberg. If you go back to the original decision making at the base of the iceberg, there are tens of millions of decisions taken every working day of the week by public bodies at central and local level. Most

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of these, of course, we hope, are correct and are not questioned by people, but above that there are some decisions that are incorrect, where mistakes are made, and where there are misunderstandings.

Q4 Chair: You say a million cases a year. In how many cases is the original decision overturned?

Richard Thomas: It varies from jurisdiction to jurisdiction. In our report *Right First Time*, in some it is as high as 40%. In Immigration and Social Security—perhaps Ray could help me with the exact figures there—anywhere between 25%, 30% and 40% of appeals are upheld by a tribunal or an appellate body, for whatever reason. What we are really trying to say, Chairman, is that the Council was set in place in 2007 to oversee the entire system, not just the cases that reach the tribunal.

Q5 Chair: You are in a bit of a catch-22 in terms of what contribution you have made to this, because if 40% of cases are still being overturned, and they are not getting it right first time, what contribution has this Council made to this? Is it even worse?

Richard Thomas: No, Chairman. What we are trying to say in our report *Right First Time* is that a very sustained and widespread effort is needed to reduce the number of cases. It must be a saving to the public purse, and it must be in the interests of individuals to try to push the agenda right back to the original decision-makers. In our report that we published in June of this year we made that point very forcibly. We identified examples of good practice: we highlighted the Criminal Injuries Compensation Authority, the Midlands branch of UKBA, where they have made real efforts to get it right first time, to learn from the outcome of appeals, and bring that back into the system. We praised those, but they were exceptions across the system as a whole. That is not the case in Social Security. Only 15% of presenting officers even attend the tribunal hearings, so there is not the continuous learning back into the system itself, and part of our job is to oversee that system, try to get it right first time, and reduce the costs for all concerned.

Q6 Chair: Can you identify specific reforms or improvements that have resulted from your work?

Richard Thomas: Yes, Chairman. I would like to address that under two headings. The first is what you might call the high-level, agenda-setting, intellectual level. I think we have pushed very hard on the *Right First Time* agenda and proportionate dispute resolution, looking at what I call a “Horses for Courses” approach—trying to get more effective mechanisms of justice, suited to the type of dispute. Thirdly, we have articulated the importance and the benefits of having a coherent system, and all the learning and cross-fertilisation and the other benefits that flow from recognising it as a single system. Fourthly, we have pushed hard to ensure that tribunals are independent, outside the decision-making process and properly integrated. Those are the general achievements we can point to.

On the more practical level, I can give you quite a long list, but I will give you some examples. First of all, we have a statutory right to visit tribunals, and

members of the Council use these rights. We observe hearings, we write up Reports judging the system from the perspective of the user, and we feed those back into the system. On fees for immigration appeals, we objected to the fact that the regime that was being originally proposed would have said that, even if the appellant had won their case, they would not get their fee back. The Government was introducing fees for people making an appeal, but the original idea was that they would not get their fee back even if they were successful. About six or seven months ago the Government changed its position on that, I think in part because of the strong representations we made, to give the tribunal now the power to say that, if the appellant has won the case, they can claim a refund of their fee.

Q7 Chair: You lobbied for a change of Government policy?

Richard Thomas: I would not use the word “lobby”. We responded to the consultation.

Q8 Chair: What I hoped you were going to say was, “Under such-and-such tribunal, there used to be 40% of decisions overturned on application, and now it is only 5% because we have done this, that and the other.” How are we going to deal with all of the Social Security cases?

Richard Thomas: In two years’ time, Chairman, I hope I could say that, if we are still around. However, our report was only published in June, and I am bound to say that although we wrote to every Permanent Secretary, we have not had a very forthright set of responses yet. Some Departments are looking at this. We hear a lot of rhetoric coming from Government about the benefits of *Right First Time*, but we still think the system is not as coherent as it should be. We held our major conference last week, and I said to 150 or 160 people that there is still work in progress to make the system more coherent. You are absolutely right; we do need to be able to point to successes in reducing the number of cases that do not go all the way to appeal, because that would save money and improve the system for everybody else.

You asked for other examples. We produced a report in the spring of this year on mental health tribunals. These are a rather obscure part of the system. They are making fundamental decisions. They are either saying somebody should lose their liberty for a further period, or that the person is free to go back into the community. These are very important decisions. Until now, it has always been the conventional wisdom, if you like, that it is not possible to obtain the user’s perspective from people who are involved in mental health tribunals. We started an exercise in which we worked with the Care Quality Commission to get a report together documenting the experiences of people who were the actual users, and that has set an agenda for carrying on further improvements in the mental health area.

On schools exclusions and admissions, which are outside the central Government system—so therefore outside the purview of the Ministry of Justice—we have made a lot of progress with the independent review panels, which the Government is reconstituting

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under the latest reforms. To give you one example, we had a meeting last week where the proposals coming from the Department for Education referred to decisions being taken on the grounds of “judicial review or natural justice”. We said, “That is not the sort of language that either the panels, the schools or the parents will understand.” More needs to be done to explain how the system was going to work. On Social Security time limits we produced a report, on which we are making some progress, articulating our view that it was wrong in principle that the individual had very tight time limits but the Department for Work and Pensions was not exposed to a time limit for each stage of the review process. With the Tribunal Procedure Committee taking this up, we are hopeful they will move towards a position where there are time limits imposed on the Department. I have five or six other examples here, Chairman; these are examples where we have had real impact and effect in recent years.

Q9 Chair: You have given them in your written evidence as well. Do you have a system for measuring your own performance and making an assessment of how effective a body you are? How would you summarise that?

Richard Thomas: I would say it is work in progress, Chairman. In 2010, before our prospective abolition came on the horizon, soon after I started as the Chairman, we published a strategic plan for 2010–13, a three-year plan. In practice we were able to deliver most of the first year of this plan, but then the question of our abolition came on the horizon, and that has created a great deal of uncertainty. In this plan, however, we had a section that talked about how we measure our performance and feedback. The section here is entitled “Measuring Our Effectiveness”, and it set in place a broad framework for evaluating how we had fulfilled the various tasks we set ourselves. We have the three-year plan and a one-year work programme, and we set ourselves a task of reporting how we actually deliver that. We do that internally—at each of our Council meetings every month we report on progress—but I am bound to say that we have not gone as far as we originally envisaged in having key performance indicators and other ways to measure our success. That is still work in progress.

Q10 Charlie Elphicke: Where is this?

Richard Thomas: It is in our strategic plan. I do not think it is one of the documents we shared with you, but we are very happy to send it to you after this hearing.

Chair: That would be most useful.

Q11 Charlie Elphicke: I cannot see anything in your Annual Report on these things, which seem central to your case for survival.

Richard Thomas: That is a fair comment. We published the Annual Report last week. I do not think we linked it to having key performance indicators. As I have indicated, we have not developed those as precisely as we originally envisaged. What I would say is that the Annual Report we published last week is a very full record of our activities across quite a

wide range of activity. It is difficult to measure this sort of work in numeric or objective terms, but I would say this is a very full Annual Report, documenting what we have done over the last year.

Q12 Paul Flynn: You say that it is work in progress. When did it start?

Richard Thomas: We had two or three Council meetings back in late 2009 and early 2010 where we agreed that we needed to have some key performance indicators.

Q13 Paul Flynn: So when did it start? It is a simple question. How long have you been in business?

Richard Thomas: The work as a whole?

Q14 Paul Flynn: When did you start to evaluate your own performance?

Richard Thomas: In the sense that I described earlier, Mr Flynn, we have always done that. We have always produced reports to our own Council and to the MoJ, who are the sponsoring Department, documenting what we have done, and that is done by reference to the various plans for each of the projects that we initiated.

Q15 Paul Flynn: How long is the progress likely to continue? Can you give us some kind of idea? Work in progress is a defensive phrase, which means, “We have not got a clue, really. We are not doing anything. We might do something today, tomorrow, sometime, never.”

Richard Thomas: In that case I think I have not been fully fair to the AJTC. What we did initiate within this framework was a system of project management. We had a project initiation document for each of our six or so projects that we were undertaking. We divide our work into the proactive and the reactive: proactive where we undertake a particular task under our own steam, and reactive where we are responding to a Government initiative.

Q16 Paul Flynn: And you get lost in the jargon somewhere. Can we get something clear? Where exactly do you feel you have progressed?

Richard Thomas: What I would say, Mr Flynn, is that we set ourselves a target of producing the six reports. Over the last 12 months we delivered on those reports: we produced *Principles for Administrative Justice* in November 2010; *Time for Action*, on Social Security time limits, in February 2011; *Patients’ Experiences of the First-tier Tribunal (Mental Health)* in May 2011; *Right First Time* in June 2011; and *Securing Fairness and Redress: Administrative Justice at Risk?* in October 2011. Those were all following project plans that we, as a Council, adopted. We said, “This is what we will try to do, and this is how we will do it,” involving both the Council members and the Secretariat, and we delivered those reports. We have not done it using the language of key performance indicators; we have simply delivered that which we set out to do.

On top of that, as our Annual Report records, we have done a very large amount of work responding to the initiatives that have come from elsewhere, for

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example the integration programme of the tribunals with the courts. We sat on the Programme Board, and we also responded to consultation papers. We have responded to the Legal Aid proposals, to fees for Immigration and Asylum appeals, the Welfare Reform Bill, the Education Bill, the adjudication arrangements for health professionals, and Special Educational Needs. Those are examples where we cannot anticipate that they will come, but as they have come, we have responded. All that is documented in our Annual Report.

Q17 Chair: I want to move on, but before we do so, generally all this decision making then being overturned on appeal is a kind of administrative chaos, isn't it? It is a real failure of Government in this country, isn't it?

Richard Thomas: We would say that there is a huge amount still to be done.

Q18 Chair: Have we gone mad? Are we trying to turn what are basically executive decisions into quasi-judicial decisions? I do not see this in other jurisdictions around Europe, for example.

Richard Thomas: With respect, Chairman, I think that you will find we are behind most of the rest of the world. If you look at the United States, Australia, France, Germany, the traditions of public law, the constitutional law, the Conseil d'État in France, the German Constitutional Court, and the whole system of public law has a much higher profile than in this country.

Q19 Chair: For people appealing against benefit decisions?

Richard Thomas: It is a fundamental principle of justice that, if an executive arm of the public sector makes a mistake, misunderstands a citizen, or makes arbitrary decisions or delivers service standards that are unacceptable, there should be some form of redress. If we did not have some kind of outlet for people to challenge Government, whether it is on planning, on education, on health, on social security or whatever, and some kind of arrangement for that to be reviewed and appealed, I think we would be severely impoverished as a nation. I do not think that is in serious dispute. I think everyone agrees that you need to have arrangements. What I think can be questioned is whether we can improve those arrangements by looking at the system as a whole and the component parts of it. I come back to our statutory criteria of accessibility, fairness and efficiency.

Q20 Chair: But how do we get to the point where the case going to appeal is the exception rather than a standard procedure for somebody who is protesting against a decision of a benefit being removed, for example?

Richard Thomas: What I would like to suggest to this Committee is that the proposals set out in our report *Right First Time*, where we set out some good practice advice—if I could just turn that up...

Q21 Chair: I think we had better move on.

Richard Thomas: Sorry, Chairman. I just have too much paperwork here. I would just like to draw your attention to this, because I think it is fundamental to achieving what we are all trying to achieve.

Chair: I think we will have to move on.

Q22 Alun Cairns: Mr Thomas, it seems to me that one of the achievements that you completed is the time limits on the appeals in relation to the Department for Work and Pensions. I know that there are time limit issues in relation to the Special Educational Needs and Disability Tribunal, for example. However, is it not the job of an MP to highlight that to the Minister? You have mentioned DWP. I have talked about the SENDIST, the Special Educational Needs and Disability Tribunal. I have taken it up with the Minister. I said I had concerns on that. The Minister said he would respond, and I would expect there to be a response in due course. Therefore, do we need the body to come up with those sorts of issues, when really those people should be coming to their MP in the first place?

Richard Thomas: I would make no claims whatsoever to usurp the role of a Member of Parliament, but I think Members of Parliament appreciate having the issues, the facts, laid before them. I do not think any of us have a monopoly of wisdom or power in this area, but on that particular issue we produced our report in, I think, February of this year. It had not been highlighted before, whether in the political arena or elsewhere. I think it was recognised that there is an issue there. The Tribunal Procedure Committee, which has the power to make the changes, is now seized of the issue. Ministers and officials at DWP, as I understand it, are still considering the best way forward. I very much welcome the support that Members of Parliament give to these matters. That is a very important role. However, with the greatest respect to MPs, I do not think they can do it all by themselves, and we, I hope, can make a contribution to improving the system.

Q23 Charlie Elphicke: Mr Thomas, the Civil Justice Council manages it all perfectly well for the family, civil and criminal justice, as far as I can tell, in terms of the oversight, staffed by volunteers at a fraction of the cost. What is the point of having your complicated machinery and producing fine reports when we could simply do it that way?

Richard Thomas: I think I would resist the suggestion that we have complicated machinery. We are a very small and simple organisation.

Q24 Charlie Elphicke: Expensive—it costs a lot more than the CJC.

Richard Thomas: About £900,000 a year. Perhaps later we could just make a point about the cost savings that the Government is suggesting. We think there could even be cost increases. However, the Civil Justice Council is quite a different body. First of all, it is chaired by the Master of the Rolls, and it is what I would describe, and I think the MoJ itself in its paper used the same language, as judicially led. It has a number of judges and other people working in the system—barristers and solicitors. Fundamentally it is

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not looking at the issues from the user's point of view. It is looking at much more detailed, operational matters. It is not looking at the big picture. Although there has been speculation and debate about whether the functions of the AJTC could be brigaded within the Civil Justice Council, the Ministry of Justice has resisted that particular suggestion.

What we do find strange is that the Civil Justice Council is dealing with quite small numbers. In terms of hearings, only 63,000 go to the civil courts as against 650,000 to tribunals, but the need for independence is even greater in the case of administrative justice because of this fundamental point that the citizen is in conflict with the machinery of Government, whether at central or local level.

Q25 Charlie Elphicke: Turning to the way things have been reorganised, it was Her Majesty's Courts Service. It is now Her Majesty's Courts and Tribunals Service. It is said that now that has been set up and has its own governance arrangements, frankly, you are just not needed anymore.

Richard Thomas: We are puzzled by that. If I could quote a sentence from the MoJ's consultation paper, it says, "Effective governance arrangements are in place between HMCTS and the Department, meaning that the AJTC's oversight role in relation to tribunals is no longer required." Fundamentally, we do not really understand what is meant by that claim. HMCTS is the administration that supports the tribunals and the courts. They, if you like, are providing the system. Our role is to provide the independent challenge and feedback, so that both policymakers in the MoJ and those operating the system inside HMCTS have a better idea from the user perspective as to what is going on. Even within the narrow field of the tribunals, we do not accept that HMCTS can do this job. There used to be customer surveys. They have been stopped. What we can offer is the experience from our visits and our very wide range of networks and contacts as to what is actually happening in practice—not just surveys and opinions, but experience. We are sceptical that HMCTS can, if you like, oversee itself, and secondly it does not have oversight of the system as a whole; it is only concerned with the delivery of court and tribunal services.

Q26 Charlie Elphicke: You say that, and yet from your evidence so far we have heard that you do lots of marvellous reports but are unable to point to any cast-iron KPIs. A cynic would say that you sat there in June, the MoJ said, "We will come along and abolish you," and you thought, "Oh, we had better produce some KPIs and start to show that we actually do something." What do you say to that?

Richard Thomas: I am not the least bit cynical. I said that we set ourselves the task of producing KPIs well before abolition was even on the agenda. However, we did get sidetracked, because we have lost resources and we have had to focus on the real work programme. I am being completely straight with you by saying that we did not produce KPIs. However, we have produced a large amount of work.

Q27 Charlie Elphicke: Is it not the case, finally, that your functions, frankly, would be far better and far more effectively advocated by the many charities who write to us about the system, and the many other organisations, lobby groups and ginger groups who all go on at MPs and Ministers endlessly and lobby everyone senseless. Frankly, they do your job and they do not cost anything. Why do we bother to have you?

Richard Thomas: With the greatest respect, I do not think that is done in a very coherent way. The Prime Minister, when he published the Open Public Services White Paper, said that he thought the user perspective in public services was very important indeed, and at that time he said that organisations like Which? could articulate the user dimension in public services. I am the Deputy Chairman of Which? Although Which? will be doing a small amount of work on public services in the future, I can say—and I said in my evidence back to the MoJ—that I do not believe, and my colleagues at Which? do not believe, that we have the capacity, the networks, the knowledge, or the insights of the administrative justice system that AJTC has, and before it the Council on Tribunals had, to get under the skin of the system, to be the middle organisation, if you like, between the various parties. I do not think that Which? or any other charity could do that sort of work.

If I could turn up the practical steps from *Right First Time*, Chairman—I am sorry, I was struggling for the paper earlier—I think it is important. You say that we are just producing reports. Here, in June of this year, we set out a number of practical steps on how to give guidance to every public body making decisions about citizens, and what they need to do to take a coherent structured approach to getting it right first time. We looked at the starting point of their systems, the analysis of their arrangements, the action they need to take, the reflection, and the areas where good practice—and we highlighted good practice—has worked. I cannot quote the figures offhand, but within the Criminal Injuries Compensation Authority there were some quite significant savings of cost by following these steps. We have been promoting these to other Departments.

Q28 Chair: But is this agenda not straying into the Ombudsman's role—correcting decisions in Government, correcting procedures in Government, and making reports to Government about how things should be improved?

Richard Thomas: No. The Ombudsman, of course, who is an ex officio member of our council, deals with maladministration. That is only one part of the system. We are primarily concerned with mistakes, misunderstandings or errors of fact, misunderstandings or errors of law, where there has been a problem quite separate from maladministration. She is part of the system—a very important part of the system. I know that she has given evidence to this Committee about our own future, but that is only one small part. If you saw the lecture that Ann Abraham delivered last month, the Tom Sargant Memorial Lecture, she would place herself and the tribunals and the other parts of the

system within the bigger picture, and our role in this is having the independent oversight.

Chair: I was there for that lecture.

Q29 Charlie Elphicke: One last very short question. Over the last year, can you give me a cast-iron figure for either a) the amount of public expenditure that you have saved by your work, or b) the number of cases of injustice that you have averted?

Richard Thomas: On the latter point, we do not deal with individual cases. On the former point, I will not give you cast-iron figures in that language. Just to give you a couple of examples: on *Right First Time* we say that, if you could reduce the number of cases going to tribunal by 20%, you would save £66 million out of the costs of the Tribunals Service. That ignores all the costs in public bodies of handling appeals. If we could get Departments—and I hope you will be helpful in this, individually and as a Committee—to reduce the number of cases, a 20% reduction would yield a £66 million saving every year. As for unit costs, the data is not available on how much tribunal and individual cases cost. The National Audit Office tried to do it a few years ago with no great success.

Q30 Chair: So a 2% reduction is a 100% return on expenditure?

Richard Thomas: Yes, thank you. Yes.

Q31 Chair: That is pretty good.

Richard Thomas: These are generalised figures.

Q32 Charlie Elphicke: That would be better coming from the MoJ. They would listen to the MoJ civil servants, and they have far more influence across Whitehall in getting it right than you guys, surely?

Richard Thomas: With respect to them, we would like to see evidence of them doing that. There has been one example. They started talking to DWP about reducing Social Security cases. I think the Minister will mention that later. We were instrumental in getting them to do that. Just look at the costs of the Tribunals Service: £336 million a year for 650,000 cases. Very crudely, and I accept it is a very crude figure, that is a unit cost of £515. The Independent Review Service, which does Social Fund reviews, have reduced their unit cost to £86. That is an example of a proportionate dispute resolution system. They do not have hearings; they do it over the telephone. They do it very fast—in a matter of days, not months or years—and they have a very high customer satisfaction rate. We have been promoting that approach.

There is a unit cost of £515 in the tribunal area, and £86 in this one service. Sadly, that service is being closed down, because the Social Fund is being abolished. What we have argued is that you should keep that service, and make it available for other types of Social Security appeal. However, we only have so much influence, and you are right to ask whether we can point to cast-iron examples of where we have had that effect. I have only been chairman for 18 months. I think you know me as a fighter, and we are still trying to have that sort of impact.

Chair: We must crack on.

Q33 David Heyes: You are clearly a fighter, from everything you have said so far, but you are also a realist, I suspect. The prospect of abolition is looming as a real possibility. The Minister has said, for instance, that if the decision is to go ahead with your abolition, the order to do that will be laid as soon as spring next year. We are talking about potentially just four or five months. I wonder what effect this is having on your ability to operate. What are the consequences for staff? Is it unsettling? What does it mean in terms of job security and continuity? Have there been any discussions with the MoJ about what is going to happen should you be abolished?

Richard Thomas: Mr Heyes, perhaps I can invite my Chief Executive to say more about that. At the general level it has created a great deal of both insecurity and uncertainty for our work, and a sense of frustration, but at the same time we have managed to deliver what we said we would.

Ray Burningham: It is an uncertain time for staff. We are very grateful for MoJ's agreement to keep our Scottish and our Welsh committees going until the AJTC is finally abolished, if that is what will happen, because there is important work going on in Scotland and Wales at the moment. But the staff remain motivated, and believe very much in what we do and in the value of it. As the Chairman has said, we have been producing what we believe is valuable work during the course of the year, and we intend to carry on doing that until the lights go out, if I can put it like that.

Q34 David Heyes: The question is—have any discussions taken place about the future of the staff?

Ray Burningham: Discussions have taken place with the MoJ. A MoJ HR representative has visited the staff and talked to us, and the staff are all aware of the options available to them. Some staff have left as job opportunities elsewhere have arisen, and have been redeployed. Others have left as fixed-term contracts have come to an end. 12 months ago we had a staff of 13. We now have a staff of nine, as staff have gradually left.

Q35 David Heyes: What about the expertise that is leaving with those staff? The hope is that the broad area of work you currently do will continue in some form within the MoJ? Surely that is dependent on retaining that current expertise within your organisation? If people are being given the opportunity to go, to take redundancy, which is the inference I take from what you have said, surely that is quite worrying?

Ray Burningham: I have 10 years' experience with Administrative Justice. I have a senior colleague with me who has 10 years' experience. Fortunately, a degree of expertise is retained. A senior colleague who wrote one of our major reports left just a few weeks ago. The expertise is gradually disappearing. We have not quite lost it yet.

Q36 David Heyes: That is not being done in any planned way. Is there any work being done to try to secure the services of individuals whom it would be disastrous to lose from the system, for example?

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Ray Burningham: As staff depart, they are not being replaced in these uncertain circumstances. That is a decision the Department has taken.

Richard Thomas: Ray is a civil servant within the MoJ who works with our Council. Perhaps I can say a little more freely than he can that we have grave anxieties about how the MoJ could exercise our functions, because they do not have the depth of experience and expertise. We do not know exactly how many staff there are working on this area in MoJ. We believe it is more or less like three or four full-time people, but that team really only started about six months ago. There was no capacity until about six months ago. A team was put in place; they disappeared to other, higher priority areas. A new team started about three or four months ago, and we were told just last week, or the week before last, that all three or four people working in this area will be gone. I think one will be gone in two weeks' time, another very shortly, and the last one will be gone by early spring—a lady working part-time in this area. There has been a very high turnover, and a completely new team will be arriving in the coming weeks, and we do worry very much about whether the MoJ will have not just the expertise and depth of knowledge but also the contacts and networks you need to have to understand the system.

Q37 David Heyes: Will there be anything left to abolish by the time we get to spring next year?

Richard Thomas: It is for Parliament ultimately to decide. When the Public Bodies Bill gets Royal Assent, that will give Ministers the power to bring orders to Parliament. We have said that, as and when Parliament resolves that we should be abolished, we have agreed in principle that there will be a two- or three-month period within which the Council would close down.

Q38 David Heyes: There must be a real risk, from what you say, that before that happens, potentially all the staff will have gone anyway, and their expertise with them.

Richard Thomas: We are feeling very fragile, but we have some very loyal and committed staff. We are down to the bare minimum now, Mr Heyes, but we are surviving as we are at the moment. It is not a comfortable or happy place to be.

Q39 David Heyes: In the same context of your potential abolition, have any discussions taken place about the priority work? Are you being asked by the MoJ to identify the crucial areas of work that it would be unthinkable to close?

Richard Thomas: We were not asked, but the Report we published last month, *Administrative Justice at Risk?*, was really a stock take of the existing system, and we set it out there very explicitly: "If we do not survive, this is our legacy. These are the areas that we think are priority areas." We listed various priorities that somebody needs to take on after our departure. Clearly, if we go, there will not be any sort of independent oversight, and we think that is constitutionally fundamentally important, but even if

some of the functions may be doable elsewhere, our report set out what we thought the priorities were.

Q40 Kelvin Hopkins: The Government has stated that the work of the Council duplicates the function within Government of giving advice to Ministers on a Ministry of Justice policy. Is this a position you recognise?

Richard Thomas: As I said earlier, Mr Hopkins, until about six months ago, throughout my time as Chairman there was not any policy function whatsoever inside the MoJ. Even now, there has been a small unit created, but administrative justice is almost entirely missing from the strategies and plans. It is hardly mentioned. I even wrote to the Lord Chancellor about nine months ago to make this point. There is simply no mention in their plans of administrative justice. It has a very low priority compared with criminal justice, civil justice, family justice and other things the MoJ takes on. As I said in my opening statement, we are sceptical that the MoJ should do it, for the constitutional reasons, could do it, because we do not think they have the capacity to do it, and we are sceptical whether they would do it in practice. The fact there has been such a high staff turnover throughout the last six months or so does not really bode very well for any sort of priority being given to this area.

At a working level, Ray and his colleagues deal with the officials. We make no criticism of them as individuals, but we are not convinced that the MoJ could provide that user perspective. In their paper they say something about, "We engage with user groups." The majority of so-called user groups—there are not very many—are primarily local solicitors, local practitioners, local tribunal judges and so on. Our function is very much focused on the individuals, the men and women who are involved in these cases. We look at these things from their point of view. It is very difficult for a Government Department to do that. The other point I would make, just to elaborate on something I said earlier, an independent body can be far more innovatory. It can fly kites; it can look at new areas of policy. It is much more difficult for a Government Department to identify the sorts of changes that need to be made. That is why our reports are perhaps not as tangible as you might like—I accept that—but we are setting the agenda, throwing out the ideas and pulling the information together, and, if that is not done, we do not see anyone else to do it.

Q41 Kelvin Hopkins: So your functions are not really duplicated within Government. They are doing something different. Isn't another significant factor that you can make public comment and civil servants cannot?

Richard Thomas: Indeed. Interestingly, in the consultation paper, the functions we have exercised were recognised. The MoJ recognised and valued the functions, and said that they could be discharged by civil servants providing independent advice. We challenged that quite strongly. It is not the function of civil servants to give independent advice. They give objective advice. They can give sound and balanced

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advice; indeed, in their submission to you the word “independent” has disappeared, and it now talks about “balanced advice”, which we think is the right way. We can recommend, we can advise, we can float ideas for improving the system. It is then for the civil servants at the MoJ to advise the Minister which ones to pursue, and which not to pursue.

Q42 Kelvin Hopkins: So, effectively, the civil servants will not be doing what you are doing. Their loyalties, inevitably, will be to Ministers and to the Government machine, not to users or tribunal members even, and it will be a fundamental change from what we see now. It is not just shifting a function from one place to another.

Richard Thomas: I think that is very much as we see it in our written submissions back to the MoJ and to this Committee. That is the point we have made. We do perform a unique function. I have not talked about the devolution aspects. We look at the whole of the United Kingdom, for example, but we look beyond the boundaries that inevitably are imposed upon the MoJ. The MoJ is fundamentally concerned with the justice system. We are concerned with the whole of public decision making as it affects individuals across the whole of the United Kingdom.

Q43 Kelvin Hopkins: Touching on a particular function, the Council examines each statutory instrument that proposes rule changes to tribunals. How necessary and effective is this scrutiny?

Richard Thomas: We do it. We have struggled in the last year or so to do it as fully as we would like, because our staff numbers have reduced, but we are still doing it. Ray can give some recent examples. We have had some engagement with the Department for Business, Innovation and Skills in the Employment Tribunal area. We look at draft instruments in procedural rules.

Q44 Chair: Who sees this scrutiny?

Richard Thomas: It goes back to the Departments. They consult us before they go public with their proposals.

Q45 Chair: So you do not produce something for Parliament to look at?

Richard Thomas: No. The Annual Report comes to Parliament. There is no secret about it. We are very transparent about this, and there is no difficulty in making our conclusions more generally available. I should correct that; Ray will help me on this. Some of them come to us at a very early stage in confidence, and we respect that.

Q46 Chair: Mr Burningham, why don't you explain?

Ray Burningham: As the Council on Tribunals, under the previous remit, the Council would see all procedural rules for tribunals, and publish good practice guidance for the Departments to follow. Under the new arrangements, of which we are part, the Tribunal Procedure Committee, comprising tribunal judges who make tribunal rules, makes rules for the unified tribunals, the ones that MoJ is responsible for. The AJTC is represented on that

Committee. We are still consulted on rules made by other Departments. Rules for employment tribunals are an example. The Department for Business, Innovation and Skills is still responsible for those rules, and just in the last few weeks we were consulted by BIS about draft rules. We published our response on the website, and if we are around to produce the next Annual Report, the report to Parliament on that consultation will be available both to Ministers and to Members of Parliament.

Q47 Greg Mulholland: I will just briefly take up the crux of the matter as to why the Government is abolishing you, which is the cost. Clearly they have laid out the cost currently, but other evidence we have seen does make the point that you have made. I quote from the group of legal professors who wrote to us, who say that “it may in fact lead to greater expenditure”. There is a powerful argument there, but how much are you getting that across? Are you able to give specific examples of where those extra costs could fall to the taxpayer?

Richard Thomas: We have had enormous difficulty, and still have great difficulty, in understanding the cost savings that the MoJ are claiming. In their consultation document, they claimed that will be a saving of £4.3 million over the next three financial years. Although we have probed how that figure was calculated, we have been unable to really understand it. The impact assessment that accompanied the consultation paper is, shall we say, somewhat opaque. We have tried to understand those figures. When we are costing only about £900,000 a year, it is difficult to see how you would achieve a saving of £4.3 million. We are not in a good position to enlighten the Committee on that aspect.

I would make some more general points about savings to the public purse if we were to be more successful in getting public bodies to reduce the flow of cases going to tribunals, or to adopt simpler and cheaper and faster ways of resolving disputes without cases going all the way to tribunal. There is, in our view, considerable scope to save money. We think we are well placed to identify, certainly at the general level, where those savings could be made. We would like to be active, as I said at the start, in pursuing this agenda of better and more appropriate justice at lower cost. That is what efficiency is all about.

The direct savings from our abolition we are frankly puzzled by. At our conference last week the Director of the Justice Group at the MoJ said there would be 12 people working in this area, either now or in the very short term. We do not quite understand where the 12 people come from. If it were to be 12 people, it would seem that the cost of abolition might even turn, in direct terms, to an extra cost, because getting rid of us and taking on 12 civil servants, it seems to us, would not save money at all. We do not have any idea exactly where those figures come from or what those savings might be.

Q48 Greg Mulholland: Do you think the Government has got its figures wrong?

Richard Thomas: All I can really suggest is that this Committee might like to probe more fully on that.

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Q49 Chair: I am sure we will.

Richard Thomas: I have seen some email exchanges, and I have to say that I could not make head or tail of what the MoJ was saying in the email exchanges about how the calculations were arrived at. We have drawn a blank on that one.

Q50 Charlie Elphicke: What other means of continuing the work of your group have you considered, and what would you need to enable the group and the work to continue?

Richard Thomas: We first got the message in July 2010 that our abolition was on the agenda, and following that we looked at various options. One option we looked at was an Administrative Justice Institute, which would be, if you like, a freestanding body outside the public sector. It could be rooted in an academic institution. One of our members spent a considerable time talking to a wide range of people about how that might be established and what it might look like. However, we came to the conclusion that it really could not get off the ground without some seed money from somewhere. We frankly could not identify anywhere that the initial launch money could be found. That rests on the table but has not been taken any further.

I hope I have been clear on this: what we really think is important is our function being continued—the function of independent oversight. We had an exchange earlier in this hearing about the possibility of the Civil Justice Council having a role there, and I know that there will be a debate in the House of Lords tomorrow on that issue. An amendment to the Public Bodies Bill will be considered again by the Lords on that particular matter. Certainly we would like to see at the very least a flexibility left in the Public Bodies Bill for some form of integration with the Civil Justice Council. That would be better, in our view, than complete abolition.

Q51 Charlie Elphicke: The other thing that concerns me is that in the age of austerity, “nice to have” is not good enough. “Must have” is the watchword of the day. Principles of being on the side of the user, hand-holding, being nice to people going to tribunals, and making sure they feel comfortable are “nice to have”. I would put it to you that you need to work harder on the “must have”, particularly on how you save money and being able to point to the number of cases in which you have made a difference.

Richard Thomas: Perhaps we should be more strident in our message, but I would take issue with you. I say this is a “must have”. The public sector is a long way

behind the private sector in learning from mistakes and understanding the importance of complaint handling. I am not saying the private sector is perfect; we can think of good examples and bad examples in the private sector. What there is now in the private sector is an understanding that, where you have mistakes, you learn from them—a system of continuous improvement. That is fundamental to our rationale: seeing where there are mistakes; good, quick, effective complaint handling, maybe appeal procedures; and then putting that back into the system and learning from that. In my view at least, that is a “must have”, not just a “nice to have”. It is in the interests of what I broadly call justice. It is also in the interests of efficiency and saving money for the public purse, and fundamentally about giving the citizens of this country a fair deal.

Q52 Kelvin Hopkins: Just very quickly, what you seem to be saying is that the Government is effectively trying to weaken the tribunal system, and we will see more rough justice for citizens. The Government do not like being picked up on their mistakes by tribunals. I know that the Home Office does not like this in particular, from my own experience.

Richard Thomas: I am not putting it in quite that language, Mr Hopkins. A lot of effort has gone into improving the tribunal system, making it more coherent. What I would say, and I said it in the preface to our recent Report, is that there is still an attitude of defensiveness or denial across the public sector. The public sector has yet to learn the value of this. Someone once said to me, “Complaints are the cheapest form of market intelligence and research,” and that is where we are seeing a fundamental gap.

You have talked about some of our priorities for the future. If we do survive at least into the spring of next year we will be doing some workshops and hearings on these sorts of matters, first of all comparing public and private sector complaint handling, and secondly a workshop on how you can resolve disputes without hearings, and the use of technology and the telephone to achieve much faster, much more effective justice.

Chair: Thank you very much indeed for your testimony. It has been an interesting session. On behalf of the Committee, I just add that whatever the outcome of these deliberations and the final decision of the Government, we have no doubt that you and your staff are dedicated public servants, and we appreciate this is a very difficult time for you as individuals and your staff. Please would you pass our best wishes to them? Thank you very much.

Richard Thomas: Thank you very much, Chairman.

Examination of Witnesses

Witnesses: **Jonathan Djanogly MP**, Parliamentary Under-Secretary of State, Ministry of Justice, and **Anna Deignan**, Deputy Director, Access to Justice Directorate, Justice Policy Group, Ministry of Justice, gave evidence.

Q53 Chair: Minister, welcome, and could you just identify yourself for the record?

Jonathan Djanogly: Jonathan Djanogly, Justice Minister.

Q54 Chair: Are you not being joined by your colleague?

Jonathan Djanogly: I was. I do not think there was a chair for her to sit in on the earlier session, but she is coming.

Q55 Chair: Very good. We very much appreciate your being present for part of the earlier evidence session. To start with, none of us can be satisfied with the system of administrative justice as it is performing in this country at the moment, would you agree?

Jonathan Djanogly: I think there is always room for improvement. There has been tremendous improvement over the last year.

Q56 Chair: What plans does your Department have to increase the coherence of the administrative justice system?

Jonathan Djanogly: Listening to, admittedly, only a part of the last evidence session, what struck me was the lack of mention of what has been going on in terms of improving administrative justice. I would say there are two aspects to that. Firstly the reactive aspect: in other words the Government has a very significant series of reforms going on, particularly in social services and immigration, which has meant that we have had to address some issues coming out of that. That is a reactive aspect. Proactively, of course, we have the formation of HMCTS, which has radically changed the whole formation, if you like, of the tribunal structure. Looking at HMCTS to start with, if I may, Chairman, because it is an important starting point, if you look back to 2007 when AJTC was set up—when the Tribunals Service was very much in a state of flux, with tribunals being attached to a whole variety of Government Departments—I can very much see where people were coming from, not least people like Lord Newton, in terms of setting up the AJTC and wanting to have some kind of policy format across the piece.

Times have very much changed, however, and we now have most tribunals within HMCTS. There are still some to come over. Another two came over this year, and there are more to come. We have accommodation sharing, so we can now look across the piece in terms of where these tribunals actually sit. If you take SENs, until last year most of them were sitting in hotel rooms.¹ We have created a chairman of judges. We now have the ability to look across the piece in terms of judicial careers. We have common standards, applicable not only in terms of tribunals but now tied into the judiciary, so we are now looking at courts and

¹ **Note from the witness:** SEND tribunals used hotels as venues before being transferred into the Tribunals Service, now HMCTS in 2006.

tribunals across the piece, and the Senior President of Tribunals sits on the Board of HMCTS.

Of course appeals, instead of being dealt with by the Department of State, which was taking the initial decisions, are now being dealt with by a single tribunal structure. The whole game, if you like, of tribunals has dramatically changed, I would say for the better. I would say that the formation of HMCTS has been one of the greatest successes of MoJ in the last year. Listening, frankly, to the previous speakers, I got the impression that we have not looked at this very much. I can tell you, Chairman, that this has taken up a lot of my time over the last year.

Q57 Chair: I have no doubt about that. How will you make sure that you can cajole other Government Departments into cooperating with you in the same way as the AJTC has a cross-Departmental view at the moment?

Jonathan Djanogly: I would say that we can do it rather better than the AJTC. Not only that, I would say that we have been doing it rather better than the AJTC. I could not give you the number of meetings, but we are talking about maybe a dozen meetings that I have had over the last year with Ministers like Chris Grayling or Damian Green to discuss how they can make better decisions in the first place within their Departments so that fewer cases have to go to tribunals.

If you look at Immigration—we can get you some figures perhaps—we have had some great successes in reducing the number. We are winning 60% of determinations, and the number of cases has started to come down. Again, if we look at Social Security, the productivity has increased, I think, 10% in the tribunals. Although the number of cases has been increasing, we are on top of it. Every month for the last 11 months we have had more disposals than cases coming into the system, so the overall numbers are now coming down. That is all through Government working together: me talking with other Ministers, and officials talking with other officials.²

Q58 Chair: So in all these efforts and achievements, AJTC has been completely otiose? It has made no contribution to these improvements?

Jonathan Djanogly: The AJTC has a very good networking structure. I would very much hope that, following their demise, we can retain the best of that.

Q59 Chair: What is your plan for retaining that?

Jonathan Djanogly: Officials have been meeting with AJTC, and we would look to set up stakeholder groupings that could retain the best of what AJTC had to offer.

² **Note from the witness:** In the last financial year 41% of immigration appeals were allowed by the First-tier Tribunal, 44% were dismissed and 15% were withdrawn. The number of ESA/IB disposals has exceeded receipts for each of the eleven consecutive months to September. For SSCS appeals as a whole the number of disposals in September 2011 exceeded receipts for the ninth consecutive month.

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Q60 Chair: You can give us an undertaking that those arrangements will be set out in detail before tabling any regulation to abolish AJTC?

Jonathan Djanogly: I can tell you that work has already started, both in terms of the Ministry looking at how we have continuity, and also in terms of the officials meeting with the AJTC.

Q61 Chair: This is a fast-track legislative procedure. The AJTC was set up by primary legislation. This is a very serious decision you are making.

Jonathan Djanogly: Indeed.

Q62 Chair: One would hope that there would be something of a White Paper produced to set out the alternative arrangements, not just an assurance that there was work in progress.

Jonathan Djanogly: It would not be a negative order. We would have to go through a full SI procedure.

Q63 Chair: Yes, I appreciate that, but it is not primary legislation, which is what set this body up.

Jonathan Djanogly: No.

Q64 Chair: So will you be tabling a proposal, a White Paper or a discussion document, a consultation?

Jonathan Djanogly: I do not think there are proposals for a White Paper.

Q65 Chair: Could we invite you to do so?

Jonathan Djanogly: We will consider, Chairman, how best to approach this matter. We will certainly look at it.

Q66 Chair: How will the new arrangements take the end user into account? That seems to be a strong selling point of AJTC.

Jonathan Djanogly: The end user in terms of AJTC reporting to Government and then Government somehow taking it back out to the end user?

Q67 Chair: It being the thorn in the flesh of Government Departments on behalf of the end user. Where is the thorn in the flesh on behalf of the end user going to be in the new arrangements?

Jonathan Djanogly: Regular discussions with stakeholders, particularly those who represent the voice of the user, have been taking place and will continue to take place through the formulation process, but ultimately in terms of policy formulation we do believe that it is the appropriate role of Government to do that rather than the AJTC.

Q68 Chair: So there will not be the independence of the present arrangements.

Jonathan Djanogly: When you say independence—

Q69 Chair: The independent voice on behalf of the end user.

Jonathan Djanogly: We are talking about a quango. When you talk about independence or accountability, I am not sure to what you are referring.

Q70 Chair: There are three tests for whether a quango should exist: whether it pursues a technical function—

Jonathan Djanogly: Yes.

Q71 Chair: —and AJTC certainly does that.

Jonathan Djanogly: It does not have a technical function particularly.

Q72 Chair: So anybody could be on the AJTC? You do not need to be an expert in administrative law?

Jonathan Djanogly: It might help generally in policy formulation, but in terms of providing technical assistance to the MoJ, it does not have that role in practice, no. I think it technically does under its statutory constitution, but in practice it does not.

Q73 Chair: Yes. The justification for keeping the Civil Justice Council, for example, is that it performs a technical function.

Jonathan Djanogly: Absolutely. Very much so.

Q74 Chair: So why is the sauce for the goose not sauce for the gander?

Jonathan Djanogly: Why does not AJTC work in terms of technical function? Because it has never evolved with that role.

Q75 Chair: I think they would dispute that. I think they are full of technical experts and academics and practitioners who deal in administrative law.

Jonathan Djanogly: Let us take the CJC as an example. I would see that as having a very important role in terms of providing, if you like, the oil between the Government and the judiciary. When you have primary legislation, and we have to look at how it will apply in the court, what sort of secondary legislation we need and how it would be treated by the judiciary, the CJC has a very definite role. I have been looking to them to a great extent for advice and guidance. However, the AJTC does not have that role. They tend to opine on policy issues.

Q76 Chair: Is that not the nature of the subject?

Jonathan Djanogly: They have established that role, and I cannot say that some useful issues have not come out of what they have said. Of course that is the case.

Chair: Okay.

Jonathan Djanogly: It is a duplication.

Q77 Chair: I understand that is the point you are making. The third test is whether they investigate facts on an independent basis, and in the way that they scrutinise tribunals, the way they visit tribunals and assess the quality of tribunals, they provide independent oversight of the tribunals that take place. Who will do that?

Jonathan Djanogly: I would suggest that their independent oversight of tribunals has been very limited indeed. In respect of planning tribunals, they have a statutory role, but other than that it is a pretty hit and miss affair, I would suggest.

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Q78 Greg Mulholland: To follow on from that, clearly we have two diametrically opposed views here as to whether this is the right way forward or not. Clearly the purpose of our inquiry is to try to work out, from those utterly opposing views, which is correct. I would like to bring your attention, Jonathan, to the comments of the Ombudsman, someone that clearly the Committee have worked very closely with and respect, as have you and the Department. The Ombudsman, in her submission, says that she is “bewildered and dismayed” by the proposed abolition of the AJTC. Specifically picking up on that point, which is a very strong point that has come through the evidence that we have had, she says, “However well meaning and diligent individual officials may be, the Ministry simply lacks the institutional history, capacity and technical knowledge to perform this role.” Throughout a lot of the evidence we have had from a lot of experts in this field, there is concern that the Ministry simply does not have the technical capacity to be able to perform that role. Why do you think that it does?

Jonathan Djanogly: If you look at the formulation of HMCTS over the last year, the work that has gone in, the way it is working and the way that the judiciary is now working with the Tribunals Service, I would dispute that. I have personally been very impressed at the ability of officials to move forward what was a very complicated agenda. Obviously I listen to what the Ombudsman has to say. I think she came out only this week and said she wanted to get rid of the MP filter as well, so there are issues that will have to be looked at there. It is interesting to note that, if you were to go to the wider judiciary and suggest cancellation of the CJC, for instance, they would be riled, whereas really they do not have any problem with AJTC going at all.

Q79 Greg Mulholland: In terms of the independence, again the Ombudsman said that the Ministry was a Government Department and “by definition lacks the essential independence of judgment and freedom of action to challenge policy proposals as enjoyed by the AJTC.” One of the issues here is that certainly as a Committee we are not hearing the strong evidence from the Ministry that that is not the case. How would you answer that?

Jonathan Djanogly: This goes to the heart of democratic Government. Do Ministers, backed up by non-partisan officials, make policy, or do quangos? This is the scope. Your question goes to the heart, and I would say it is Ministers, backed up by an objective Civil Service, who are answerable to Committees such as your own, and indeed let me mention also the Justice Select Committee, who take a strong interest in such things.

Q80 Chair: I do not think there is any dispute that Ministers in the end decide policy. The question is whether there is some independent and external challenge, from an expert viewpoint, from a knowledgeable viewpoint, which is clearly necessary in the fields of civil justice and criminal justice but for some reason the Government does not consider necessary in the case of administrative justice?

Jonathan Djanogly: As I said, we are very keen to take on board the stakeholder element of AJTC and use it to the benefit of the Tribunals Service. That is very different from saying that there should be a statutory, policymaking—

Q81 Chair: It does not make policy. AJTC does not make policy. It advises the Government publicly and independently.

Jonathan Djanogly: Yes. Well, if you were to read, for instance, their latest annual report, it is very policy biased.

Q82 Chair: Maybe you do not like what they say.

Jonathan Djanogly: No, we take on board what they have to say. I have to say, in most cases our agendas tie in very closely—in fact in the significant majority of cases. You have mentioned already the need to get early correct decisions from Government Departments. That is an agenda item that they have been pushing very strongly, and that we are pushing very strongly too. Help me out, Anna—what other sorts of policy issues?

Anna Deignan: I think the Getting it Right First Time agenda is a key part of the AJTC’s work, and it is something we are working very closely with them on. Getting decisions right at the point of entry to the system is essential for everyone. It makes the system swifter, more cost-efficient, and also more accessible to users, who are using a sometimes complex administrative justice system. Some of the areas that we are looking at, building on the AJTC’s work, include for example Jobcentre Plus carrying out a pilot to proactively contact customers and explain their decisions, and perhaps provide more information if they need it. That has led to a 15% reduction in cases. That is 16,000 people who might have ended up in formal tribunals who have not. We are doing a lot of work in these areas particularly, as the Minister says, on the Right First Time agenda.

Jonathan Djanogly: Let me add to that building links with devolved administrations, the same agenda, and ongoing process of tribunal reform. I have mentioned HMCTS but there is a continuing agenda there that is shared between us. On supporting the Tribunal Procedure Committee on reworking rules—again, a shared agenda between us. Most of what we do is a shared agenda.

Q83 Chair: Can we just press you on the capacity your Department has, and this point raised by our previous witnesses about the shortage and high turnover of staff in the Administrative Justice Directorate, if that is what it is called? Is it a Directorate?

Anna Deignan: It is the Access to Justice Directorate.

Q84 Chair: Access to Justice. Well, we are very glad that some emphasis is being put on administrative justice in the Department.

Anna Deignan: Indeed.

Q85 Chair: I gather you are the first ever of your—

Anna Deignan: Indeed. I am the first to have an established team dedicated to administrative justice.

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Q86 Chair: How many staff do you have?

Anna Deignan: I have 12 staff.

Q87 Chair: 12 staff. How stable is your staff recently? The suggestion has been made that there is high turnover.

Anna Deignan: There is currently a change programme under way in the Ministry of Justice to drive through some headcount reductions, so there is a turnover in staff. However, all staff will be replaced by the end of the year, and our core expertise will remain.

Q88 Chair: Will you be taking on some of the people from the AJTC?

Anna Deignan: We will consider that. There are eight full-time civil servants currently with the AJTC. They will be placed in the redeployment pool, and we will consider where the most appropriate place to allocate them is.

Jonathan Djanogly: They will come over.

Anna Deignan: They will come over, yes.

Q89 Chair: But not necessarily into your Department?

Anna Deignan: We will consider that. Every redeployment decision is taken on its individual merits.

Greg Mulholland: May I move on to a follow-up point on expenditure?

Chair: Yes.

Q90 Greg Mulholland: Jonathan, a key issue I want to raise with you is clearly this extraordinary discrepancy we have in terms of the cost saving. If I can pick up directly on that point with you, Anna, I have had an estimate in our written evidence that, of the approximately £1,000,000 that the AJTC currently costs, £400,000 is actually staff in the Ministry or devolved staff. That is a huge proportion—approximately 40% of the costs. You have just said that those people will all be redeployed. The savings to be made already, then, seem to be £600,000, which is not a huge amount and certainly nothing like the extraordinary £4 million figure, Jonathan, that has been there. The AJTC are baffled by it, and we ourselves do not understand it.

Jonathan Djanogly: The AJTC has a budget allocation of £1,318,000 for 2010–11. As has been said, staff will be coming over, but that does not necessarily mean that they will be coming over into that particular team. They may be redeployed.

Q91 Greg Mulholland: But unless they are made redundant, there is no saving to the taxpayer, and that is what this is about.

Jonathan Djanogly: It has to be put into the context of overall savings in the Department. Overall the Department is getting rid of some 15,000 people.

Q92 Greg Mulholland: If they are being redeployed, that means passing it on to another Department, so actually not a saving to the taxpayer.

Jonathan Djanogly: No. It depends whether they fit into the other 15,000, or whether they are given other jobs.

Q93 Chair: Is there no increase in the number of personnel on administrative justice in your Department?

Jonathan Djanogly: The proposal is to have a team of 12.

Q94 Chair: That is a proposal?

Jonathan Djanogly: We have a team of 12.

Anna Deignan: No, we have a team of 12, and there will be increases before the end of the year. We have something called the Policy Plan, in which we have all of our policy priorities listed, and resources allocated to that. That has just been agreed with Ministers.

Q95 Chair: Presumably this increase in personnel is a response to the abolition of the AJTC and taking the function in-house, yes?

Anna Deignan: We have now taken the time to have a look at the administrative justice landscape more broadly.

Q96 Chair: Is that a yes or a no?

Anna Deignan: We can see there is a lot of work that needs to be done in this area, so I am bringing in more staff to help with particular things like the Right First Time agenda.

Q97 Chair: Excellent, but the net saving is obviously less than the £1,300,000 headline figure, isn't it? You will have to take over some of the functions.

Jonathan Djanogly: What we have agreed is to have a level of fluidity here. We will see to what extent we need extra capacity.

Q98 Chair: The £1,300,000 per year is a gross saving. It is not a net saving, is it?

Jonathan Djanogly: It is a gross saving.

Q99 Chair: Yes. So what would the net saving be? Perhaps you could write to us on that.

Jonathan Djanogly: We can, but it may be at such time as we have done the job interviews and looked at what we need, once we have decided where duplication is to be avoided.

Q100 Chair: But the £1,300,000 as a gross saving is a bit misleading as a figure, isn't it? It could be misleading.

Jonathan Djanogly: It is a figure at the current time, but depending on how resources are redeployed, it could change, yes.

Q101 Greg Mulholland: Also, it is very important to clarify, Chair, if the £400,000 staff costs of that are being redeployed, then it may be a saving to the Ministry of Justice, but it is not a saving to the taxpayer. That is correct?

Jonathan Djanogly: That could be correct, yes.

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Q102 Greg Mulholland: If they are being redeployed, it must be correct.

Anna Deignan: Just to clarify, we will not know that until we have worked through our whole Policy Plan and decided where resources need to be allocated. There may end up being redundancies in various areas, so we cannot yet take that view, but we will write to you.

Q103 Greg Mulholland: My final question, Chair, if I may, is just to say that a key challenge coming from the people who obviously do not agree with this decision is to say that it could end up costing the taxpayer more money. Can you assure us that is not the case?

Jonathan Djanogly: I cannot see how it would cost the taxpayer more money. It could only be less.

Q104 Greg Mulholland: And have you fully addressed and answered all those arguments, and written to the professors who have suggested it might?

Jonathan Djanogly: I have written to those who have written to me, yes.

Q105 Greg Mulholland: Could you share that letter with us, if you have not already done so?

Jonathan Djanogly: I am not sure I can share private correspondence, but I can certainly address the point that you have made.

Greg Mulholland: It is clearly not private correspondence, because we have copies of their letters here. It would be useful to have your response.

Q106 Chair: We can have it under a Freedom of Information request, if necessary. But I am sure you will give it to us.

Jonathan Djanogly: We will certainly address the issue.

Alun Cairns: Chairman, my question does not relate to the cost. Do you want me to pursue it? Does someone else have something related to cost?

Q107 Charlie Elphicke: I have a quick question on the cost. Mr Djanogly, this is a lot of hassle to save half a million quid, which is what it will end up being. Is this not just deckchair shuffling?

Jonathan Djanogly: There seems to be a possibility of a presumption that this is just about saving money. It is actually not. We think that Government are the people who should be properly creating policy in this area.

Q108 Charlie Elphicke: So you would say it is about transparency and accountability?

Jonathan Djanogly: Indeed it is.

Q109 Charlie Elphicke: The agenda promoted originally by Mr Thomas, as I recall.

Jonathan Djanogly: Indeed it is.

Q110 Alun Cairns: This does tie in with my question, Chair, if that is okay. So who then would be the champion of some sort of administrative failure, or maybe the resource allocation, if there are issues surrounding resource allocation, in relation to the

various tribunals? For example, you highlighted the planning and time limits that have been taking place, and that is a question that we pursued earlier.

Jonathan Djanogly: Yes.

Q111 Alun Cairns: DWP came from Mr Thomas, and you rightly highlighted that there is work going on on that, as well as asylum and immigration. You mentioned that you had met Damian Green, the Minister responsible there. Is it not the case, however, that those are hot topics? There is a lot of political attention around those. What about the areas around mental health and SENDIST? For example, there is already a six-month delay in a SENDIST appeal, something I have highlighted with you in the past. It is my job as an MP to highlight that, but who will be the champion for the service user?

Jonathan Djanogly: Me. Let me tell you that SEN is one of the worst examples we have at the moment. We have about 35 tribunals, so I cannot remember all the statistics for all of them, but off the top of my head, about 80% of appeals are being won at the moment on SEN tribunals, whereas if you take Immigration, over 60% are being lost.³ That is a very good pointer, to me, that SEN needs a lot of work, which is why in recent weeks I can tell you I have been meeting with quite a lot of the people involved in SENs, and I have been in discussions with Education to improve what I think is a poor Tribunals Service.

Q112 Alun Cairns: There is a Green Paper coming out—

Jonathan Djanogly: I am sorry. When I say poor, it is not a poor Tribunals Service; we are getting it wrong in terms of too many appeals being made in the first place.

Q113 Alun Cairns: That is right. I think there is a Green Paper coming forward in that area. But it is the time delay that I am getting at. There has been a six-month delay for a considerable period of time, and if you are a six-year-old child, a six-month delay has a huge impact on the development of that child. So who will be the champion?

Jonathan Djanogly: This is something that should be dealt with by the Department, with an answerable Minister. I am happy to answer to you today on the matter. I can tell you that it is something I am very concerned about and that we are addressing. It is a historic problem, by the way.

Alun Cairns: Absolutely.

Jonathan Djanogly: It mainly relates to the fact that local authorities are not taking—

Q114 Chair: They use it as a cost control measure, don't they?

Jonathan Djanogly: I think that is true in many cases.

Alun Cairns: Yes, they do.

Q115 Chair: Shall we move on?

³ **Note from the witness:** In the last financial year 41% of appeals were allowed by the First-tier Tribunal, 44% were dismissed and 15% were withdrawn.

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Jonathan Djanogly: Can I add one other aspect to that, though? Another important aspect that is cross-cutting is that, when we are talking about cases being determined earlier and better, it is not just about Government Departments making better, earlier decisions. It is also about people having alternative venues, which is why we are very keen and we have a whole policy agenda to promote ADR. You mentioned, for instance, SEN. We are looking at it in terms of employment tribunals and a whole variety of other tribunals to get people to go to mediation so that they do not even need to go to tribunals in the first place. That is a whole significant agenda we are looking at.

Q116 Alun Cairns: There is the accusation from the service user that the mediation is yet another delay to the process, and that is why there needs to be a champion.

Jonathan Djanogly: That is a fair point, which is why we are generally looking now at mediation assessment, rather than forced mediation. This is a whole policy agenda that we are pushing in many different ways, and across the Court Service. This is a very good example of how bringing together court process and tribunal process is important, and that is another reason why it should be done through the MoJ.

Chair: Mr Heyes, I apologise for having trespassed on some of your questions.

Q117 David Heyes: It has been covered to some extent, Chair, but a couple of points: what has been established in the answers so far is that, potentially just a few months away from this major change, you still do not know what your overall resource requirement will be. You still do not know what the staffing numbers or staffing need will be. We know from previous evidence we have had that there is the serious risk of the loss of a large bank of expertise that has been working in this area for many years. It is all very worrying, isn't it, and uncertain? The question really is—how are you going to deal with the transition? Will you need to pay consultants? Will you need to bring external support and advice to bear on this?

Jonathan Djanogly: There are two points. Firstly, we cannot pre-empt AJTC's abolition. It is still going through the House.

Q118 Chair: It is Government policy. You should be planning for it.

Jonathan Djanogly: We are planning for it, but at the same time it is a work in progress for us.

Q119 David Heyes: You said earlier, Minister, "following their demise". That suggests you have made up your mind already.

Jonathan Djanogly: That is a conditional demise, isn't it? I would not want to pre-empt Parliament. Secondly, and importantly, it is taking AJTC in isolation, whereas what I hope I have been making out today is that we are not coming at this from fresh. We are not just starting: "Oh, let us do what AJTC does." Firstly, most of what we do is duplicating what

they do, and secondly, this is a policy area that we as a Department, I as a Minister, have been spending a lot of time on over the last year. It is not a "where do we start from?"

Q120 Kelvin Hopkins: This is really about control. It is not about money at all. It seems to me to have the flavour of Blair at his peak, when they wanted to draw as much power into central Government as possible. The idea that Ministers can be the champion of users, our constituents, when actually they are appealing against decisions made by the very Departments that Ministers represent and lead, is incredible. There is a conflict of interest there. The whole idea of tribunals is that they are independent. Their lobbying body, if you like, is the Council, and they must retain that independence to make sure that our constituents have the right decision made.

Jonathan Djanogly: It is a good constitutional point, but I would say it should have been answered by the policy that we have been adopting, which is to take tribunals away from the Ministries that have been making the decisions, put them within the MoJ, put them within the combined management structure of HMCTS, with a Minister, ultimately the Secretary of State, the Justice Secretary, who is of course duty bound constitutionally to represent the interests of the judiciary. I would say that is a much stronger constitutional position than doing things through the AJTC.

Q121 Kelvin Hopkins: But the tribunals in this scenario would become pussycats under the control of Departments, rather than independent bodies. The members of tribunals would be more worried about what the Department thinks than about what our constituents think.

Jonathan Djanogly: The constitutional structure that we are moving to through HMCTS is of course putting tribunals in the same position as courts. I do not think anyone would say that the judiciary—and of course the tribunals are now part of the judiciary—is subject to the whims of politicians, and that is certainly not what we are aiming to have.

Q122 Kelvin Hopkins: But the judiciary is independent. Part of how our unitary system of government works is that we have checks and balances, and we have to have a degree of independence. The more you draw them into Government Departments, the less there is a check and balance, the more power central Government has, and the less justice will be seen to be carried out.

Jonathan Djanogly: I would respectfully disagree. I think taking the tribunals out of the specific Departments and putting them into the MoJ, subject to the Lord Chancellor, gives them more independence constitutionally.

Q123 Kelvin Hopkins: If I could just follow the theme, weakening tribunals, as I think it will, as the object is—and Government Departments, notably the Home Office—

Jonathan Djanogly: How will tribunals be weaker?

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Q124 Kelvin Hopkins: If they do not have an organisation that is independent and can publicly represent them, in a sense, as the Council does, but they are represented by a Government Department, effectively, we see tribunals become weaker and the whole system becomes weaker. Government Departments, notably the Home Office, do not like tribunals. I am sure others have come across this. In immigration cases where they get a decision that goes against them, it takes months to get them to take action on that decision, because they do not like the decision. They do not like tribunals. They are a nuisance.

Jonathan Djanogly: Sorry, who thinks tribunals are a nuisance?

Q125 Kelvin Hopkins: The Home Office. My experience of Home Office, when decisions go against them on immigration cases, is that they are irritated by the decision and they drag their feet on implementing what the tribunal is recommending. Anyway, let us assume that the tribunal system becomes weaker. Then there are more bad decisions. We will have queues a mile long outside our surgeries, coming to complain to us that people have been mistreated, badly treated. The civil servants who make the decisions will have less pressure on them. Therefore there will be more bad decisions, more rough justice, more people coming to our surgeries and more problems for MPs, instead of having a tribunal that is fair and independent, making good recommendations. Then we can say to our constituents, "You have had the decision; unfortunately it went against you and there is nothing more we can do." At least the system is fair. The drift looks to me as if it is taking power into Departments and weakening the whole tribunal system. Certainly in employment law we have already had Ministers making speeches saying that they want to weaken tribunals in relation to employment law, in particular.

Jonathan Djanogly: Yes. I have tried to explain how, over the last year following the creation of HMCTS, tribunals have become stronger. Their management has become integrated with the courts management. Their judges have been integrated with the courts judges. Common standards across both services have improved. I would say that the changes that have taken place in this area over the last year have made tribunals much stronger. The AJTC itself is a NDPB. It is not a tribunal or any other form of judicial body.

Q126 Kelvin Hopkins: But it has a degree of independence.

Jonathan Djanogly: The proof of the pudding is that, if you go through in the last year what tribunals have been doing, we have seen productivity improve by, I believe, 10% in the last year. There are significant numbers of cases, so the challenge has been there. If we take Social Security, for instance, the number of appeals has gone up by 55% over the last five years, and yet productivity has gone up, and we have the caseload going down at the moment because we have significantly increased the number of judges and medical members. This is an area that we are on top of, and the figures are moving in the right direction. I

think it is a success story. I would say it is the reverse of what you are suggesting could happen.⁴

Anna Deignan: One thing I would like to talk about is the role that we have in central Government, and the opportunity we have to influence those decision-making Departments. You picked on two there in particular. The Minister referred to dispute resolution. For example in employment tribunals, we are working there on a pilot of judicial mediation, so a judge helps parties reach a settlement without a formal hearing. That is in everybody's interests.

Jonathan Djanogly: All cases to go to ACAS.

Anna Deignan: Indeed. You also mentioned immigration decisions. Working very closely with the Department for Work and Pensions and UKBA on benefits and immigration decisions, we are looking at what we call reconsiderations. That is an internal review that provides the Department with an opportunity to look afresh at their decision, perhaps with new evidence, before a formal appeal is lodged. Because we are in the heart of the machinery, we are able to have that dialogue and influence.

Q127 Kelvin Hopkins: I suggest that with a judge making a decision on their own, without wing members, we would get more rough justice and more harsh treatment about decisions.

Jonathan Djanogly: This is being consulted on at the moment, and the Government will have to take a view on this. What I can tell you is that the MoJ has been working very closely with BIS on this. The consultation document that went out was jointly put out by me and Ed Davey. That is a very good example, Chairman, of how Justice is very keen to work with other Government Departments on policy areas.

Kelvin Hopkins: I have had enough, Chairman.

Chair: Thank you, Mr Hopkins.

Q128 Charlie Elphicke: Just to take you back to the issue of productivity, you have been saying that there have been some productivity improvements of recent times. How much of those improvements is due to the work of the Council?

Jonathan Djanogly: None of them. They are management-led productivity improvements.

Q129 Charlie Elphicke: Has the work of the Council helped to make any savings, or indeed helped users to avoid injustice and the other things that they do? Are you aware of any particular numbers?

Jonathan Djanogly: Generally the latter, which is why it is hard to attribute numbers.

Q130 Charlie Elphicke: The other thing that I wonder is: why are there so many tribunals and so many appeals? Shouldn't there be less of both?

Jonathan Djanogly: That is an interesting question, and it would depend on the circumstances. For instance, normally speaking, if the number of appeals goes up, I would want to know what has gone wrong

⁴ **Note from the witness:** In 2010–11, there were 418,500 receipts to the First-tier Tribunal (Social Security and Child Support); in 2006–07, there were 223,303 receipts to the First-tier Tribunal, which represents an 87% increase.

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from the Government Department. Has their management changed? Have they started doing something wrong? However, if Government policy has changed such that the underlying law has changed, which means that you will see a spike in appeals, that again could be a valid reason. You cannot necessarily say that an increase in appeals is related to that Government Department having done wrong. You would have to look at the underlying reasons.

Q131 Charlie Elphicke: Let me give you an example. My constituents in Dover feel very passionately about immigration. They feel the Immigration Tribunal should be got rid of, and we should fast-track decisions and chuck people out who ought not to be here. That would be a policy decision, would it, to abolish that tribunal, and generally reduce the number of tribunals or things like that?

Jonathan Djanogly: That would be a policy decision. Policy has to take on board other such things, such as the ECHR and various other things. But yes, it would be a policy decision, indeed, on which one would consult.

Q132 Charlie Elphicke: Finally, and we have touched on this issue, you say this is not about the money but about accountability.

Jonathan Djanogly: The money issue is there. The CJC costs £300,000, and we have this in the budget as £1,300,000. Let us say that could be different. However, there are certainly money aspects.

Q133 Charlie Elphicke: There are money aspects, but your case was that the overriding issue is one of accountability.

Jonathan Djanogly: And policymaking. Policy and accountability, yes.

Q134 Charlie Elphicke: And you, as a Minister, are the policymaker and the one who is accountable. Do you therefore see yourself, if you like, as the user of the tribunal system's representative in the Government, rather than the Government's representative to the Tribunals Service?

Jonathan Djanogly: The Secretary of State has a statutory duty to protect the judiciary. I am not sure of the exact wording. That is very much at the forefront of our thinking. But it is also to provide an effective appeals process at the lowest cost possible to the taxpayer.

Q135 Chair: Can you have one more go at this, Minister? I still do not quite understand why it is necessary to have a Civil and a Criminal Justice Council, a council for each of those subject areas, but not for administrative justice.

Jonathan Djanogly: There is a Family Justice one as well. There is a procedure committee—I forget the exact name of it, but it deals with procedure, so there is the equivalent, in effect.

Q136 Chair: But that is not an independent body, is it? It does not publish independent reports. It is not a statutory body, so it is not an equivalent to the Criminal Justice Council or the Civil Justice Council.

Jonathan Djanogly: I will have to come back to you on that.

Q137 Chair: If you could, I would be very grateful. Also, of course, there are some tribunals that are not in the Courts and Tribunals Service, like education tribunals. You have talked a bit about SEN provision, for example, and SEN appeals. How will MoJ supervise those in the same framework in the way that AJTC does now?

Jonathan Djanogly: I would not say that we would do it any worse than AJTC. You have mentioned, for instance, employment. Employment is technically BIS. I have been heavily engaged with BIS, for instance—more engaged than the AJTC has been, I would suggest.

Q138 Chair: The Master of the Rolls suggested last week that maybe the Civil Justice Council should take on some aspects of AJTC's work. What is your reaction to that suggestion? Is that something you have considered?

Jonathan Djanogly: I thought the judiciary generally were not keen on that happening.

Anna Deignan: They were not keen on the Civil Justice Council being included in the Public Bodies Bill.

Jonathan Djanogly: Right. But if there are specific aspects that could be taken on board, we are prepared to hear what he has to say. I do not know, Chairman.

Q139 Chair: The judiciary were not keen to have the AJTC in the Public—

Anna Deignan: Sorry. The judiciary have concerns about the Civil Justice Council being included in the Public Bodies Bill.

Q140 Chair: But I think that the Master of the Rolls said last week that the Civil Justice Council should take over some aspects of AJTC to ensure that there is that independent oversight. Is that something you would consider?

Anna Deignan: Indeed. I was at the event. It was the AJTC conference, and the Master of the Rolls did indeed indicate that, and that is something we will indeed consider.

Jonathan Djanogly: Yes.

Q141 Charlie Elphicke: It does not seem to be just this Council. There seems to be a Civil Justice Council, a Criminal Justice Council, and a Family Justice Council.

Jonathan Djanogly: Yes.

Q142 Charlie Elphicke: No doubt there is a whole load of other Councils. Why are there so many quangos? Why are they not all merged or reduced and reorganised?

Jonathan Djanogly: We are looking at that issue too. For instance, the secretariat of the CJC will be merged with the secretariat of the Family Justice Council. Although the CJC costs, I think, about £300,000 per year—⁵

⁵ **Note from the witness:** The secretariats have already been merged, leading to reduced running costs of £312k.

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Anna Deignan: That is right.

Jonathan Djanogly:—that will come down once we have merged the secretariats. We are looking at other things as well.

Q143 Chair: Has the Government consulted the Senior President of Tribunals, Mr Robert Carnwath, on the future of the AJTC?

Jonathan Djanogly: I have certainly spoken about it with him. Whether I have sent him a letter—of course this was mooted over a year ago, so I have written a lot of letters to a lot of people.

Anna Deignan: The Senior President of Tribunals did respond to the consultation on the Public Bodies Bill.

Q144 Chair: What is his view?

Anna Deignan: He has concerns about some of the functions that the AJTC perform, and our ability to take them on. The main issue is the independence issue, which we have covered a lot today.

Q145 Chair: Is he in favour of the abolition, or is he expressing concerns about it?

Anna Deignan: He is concerned that the independent overview must be guarded. That is his priority.

Q146 Chair: So he is against the abolition of the AJTC?

Anna Deignan: Trying to recall the tone of his letter, I think that is probably a fair reflection.

Q147 Chair: Thank you. I would just close by saying that I have absolutely no doubt, Minister, of your sincerity in wanting to be the champion of the end user and to be the independent voice accountable to Parliament in favour of administrative justice and improvement in the system. You as an individual might be very capable of doing it, but depending on Ministers, who come and go, it is not the most reliable constitutional way of overseeing what is a very large and expensive area of Government policy.

Jonathan Djanogly: The Justice Select Committee have this area within their sights as well, of course.

Q148 Chair: Have they expressed a view on this matter?

Jonathan Djanogly: I do not know. You might like to ask them.

Q149 Chair: They may be looking at our Report with interest. You have been very robust, and very straightforward, and very clear in your view. Minister, Anna Deignan, thank you very much indeed for your testimony.

Anna Deignan: Thank you.

Jonathan Djanogly: Thank you.

Written evidence

Written evidence submitted by the Administrative Justice and Tribunals Council (OAJ 01)

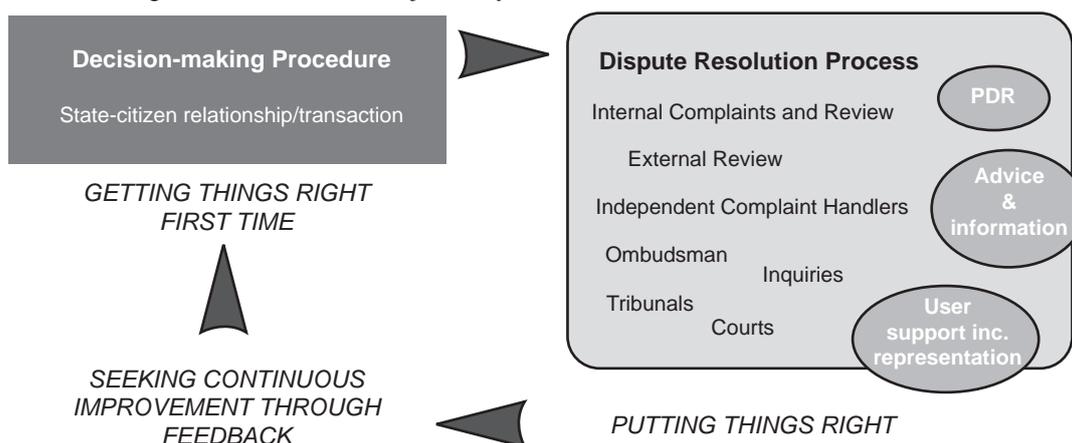
1. The Committee's inquiry into the government's plans for future oversight of the administrative justice system takes place against the background of the government's announcement that it plans to abolish the Administrative Justice and Tribunals Council (AJTC). The AJTC submits this evidence to assist the inquiry. The Chairman and Chief Executive will be happy to elaborate on any aspect at the oral evidence session scheduled for 22 November 2011.

THE ADMINISTRATIVE JUSTICE SYSTEM

2. The administrative justice system, as defined by the Tribunals, Courts and Enforcement Act 2007, is crucial to how the state treats its citizens, especially where there have been mistakes, misunderstandings or unacceptable standards of service. This includes decisions made by central and local public bodies about individuals, plus the arrangements available for questioning, challenging and/or seeking to change the decision of a public body. Such arrangements include:

- complaint schemes;
- ombudsmen;
- tribunals—both within and outside the unified tribunals structure administered by HMCTS; and
- the administrative court.

3. As part of its early work, the AJTC produced this model to illustrate the links between the various elements and stages of the administrative justice system:



4. The range of subject matter encompassed by administrative justice includes social security and child support, war pensions, immigration and asylum, mental health, tax, criminal injuries, special educational needs and disability, school admissions and exclusions, care standards and parking. For the vast majority of citizens, this is their principal engagement with government and democratic processes and the issues are of great (often life-changing) importance to their family welfare, their livelihoods and sometimes even their liberty. It is surprising that the system does not receive the same recognition or priority as other aspects of public policy or justice, and often appears to suffer from a lack of understanding and strategic direction. Despite much rhetoric about the need to improve public services, to focus more on users, to concentrate on fairness and to uphold the rule of law, administrative justice continues to have “Cinderella” status.

5. The scale of the system makes its low priority even more surprising. There were around 650,000 formal tribunal appeal hearings in 2010, compared to 223,000 criminal justice hearings and 63,000 civil justice hearings (excluding family hearings). In addition, the Parliamentary and Health Service Ombudsman received 23,422 complaints in 2009–10 (although not all of these proceeded to an investigation) and the Local Government Ombudsman received 21,840 complaints during the same period. But these appeals and complaints represent only the tip of the iceberg that is the administrative justice system. Government departments and agencies make tens of millions of decisions affecting citizens every year. The costs associated with original decision-making processes within government cannot be readily quantified as the data is not available. The cost of the tribunals administered by the Ministry of Justice (MoJ) in 2010–11 was £336 million.

6. The concept of an administrative justice “system” is taking time to be universally recognised. It implies a strategic, cross-cutting view of decision-making and redress mechanisms across government, making it possible for general principles to be stated, good practice to be shared, and comparisons to be drawn between alternative approaches. The concept challenges the historical silo-based approach that often appears to define the public sector in the UK. Tribunals have little control over the demand which flows to them from departments and agencies. The latter have few financial or other incentives to learn from complaint or appeal outcomes or

to reduce demand by doing more to get it “right first time”. At the policy level, the Cabinet Office has the lead on ombudsman policy, while the MoJ has responsibility for most (but not all) tribunals. The MoJ also has nominal responsibility for the administrative justice system as a whole, but has little influence over the rest of central government and no influence over local or devolved governments. In practice, collaboration between decision-making departments and the MoJ, to understand and improve the end-to-end experience of the citizen when disputes occur, is in its infancy. And there is a complex mix of devolved and non-devolved tribunals in Scotland and Wales, with confused responsibilities, a lack of clarity about strategic direction and no-one (apart from AJTC) with UK oversight of the system as a whole.

ADMINISTRATIVE JUSTICE AT RISK?

7. Despite the challenges, the AJTC considers that the administrative justice system has made laudable progress in recent years. This is largely attributable to the reforms which followed the Leggatt Report of 2001, in particular in the area of tribunal reform. However, there remains a long way to go before the system can be said to meet the needs of individuals and the public purse.

8. The AJTC recognises that the UK currently faces a period of austerity and that the government is reducing public spending in real terms. This makes it especially important to save money by reducing the need for costly appeals and complaints. It is equally important that decisions taken to achieve cost savings in the area of administrative justice actually achieve this goal, while avoiding unintended and deleterious effects on individual rights and legitimate expectations. For example, cuts in legal aid and the provision of advice services are likely to reduce access to justice for individuals, result in fewer unmeritorious cases being weeded out and prolong cases which do proceed. Unresolved disputes may also generate greater costs both for individuals and families and ultimately for government and the taxpayer. This is especially important in times of economic and social uncertainty when it is vital to have acceptable arrangements for the redress of grievances.

9. The AJTC’s most recent report, **Securing Fairness and Redress: Administrative Justice at Risk? (Annex A)** highlights both the current problems and ongoing risks, explaining the need for longer-term reform. The report challenges the government and Parliament to recognise the scale of poor decision-making, and therefore unnecessary cost, generated as a consequence of complex and poorly drafted laws in some areas of administrative justice. It explores the effects of recurrent poor decision-making and highlights the importance of access to advice and guidance in seeking redress against an administrative decision. It concludes with a series of suggestions for wider strategic reform.

“ACCESSIBLE, FAIR AND EFFICIENT”— THE FOCUS OF THE AJTC

10. The AJTC was created under the Tribunals, Courts and Enforcement Act 2007 as the successor body to the Council on Tribunals. Schedule 7 of the Act charges the AJTC with “*keeping the overall system under review*” and gives it responsibility for considering ways to make the system more accessible, fair and efficient. The focus is very much on individuals as users of public services and redress mechanisms.

11. The creation of the AJTC formed part of the same package of reforms that saw the introduction of a unified structure for central government tribunals and the creation of the Tribunals Service as a distinct executive agency to administer them. The Tribunals Service has subsequently been subsumed into HM Courts and Tribunals Service. It was recognised that over time these new structures would make a number of the functions of the Council of Tribunals, which had overseen tribunals for 50 years, redundant. However, the creation of an AJTC with a much wider remit, working alongside the new structures, was seen as a key part of the new arrangements.

12. The AJTC comprises 10–15 members, selected for their expertise from across the administrative justice system. The Parliamentary and Health Services Ombudsman is an *ex officio* member. The AJTC also has statutory Scottish and Welsh Committees. The Scottish Committee is made up of three to four members, and the Welsh Committee of two to three members. These Committees meet separately, and are represented at AJTC meetings by their respective Chairs. The annual running cost of the AJTC and its Committees is approximately £1 million. The Annual Report for 2010–11 is due to be published on 14 November (see **Annex B**).

WORK OF THE AJTC

13. The AJTC played a significant part in the recent reform and transformation of the tribunals system. Its contribution included participation by its former Chairman, Lord Newton of Braintree, in key committees devising and implementing reforms; hosting a series of conferences and consultative events for the administrative justice sector in support of the reform process; and through its Guide to Drafting Tribunal Rules and participation in the Tribunal Procedure Committee, playing a significant role in work to simplify and streamline tribunal procedural rules. AJTC members have a statutory right to attend tribunal hearings and are assiduous in feeding their observations back into the system.

14. The AJTC has subsequently focused on its wider remit. In addition to its most recent report “Securing Fairness and Redress: Administrative Justice at Risk?”, AJTC publications have included:

- *The Developing Administrative Justice Landscape, September 2009 (Annex C)*—
A preliminary examination of the constituent elements of the administrative justice system, exploring the links between these elements;
- *Principles for Administrative Justice, November 2010 (Annex D)*—
A set of seven Principles intended provide a coherent framework for both decision-makers and redress bodies, and to demonstrate the standards which the AJTC uses to evaluate the system and its component parts;
- *Time for Action, February 2011 (Annex E)*—
An investigation into the length of time it takes the Department for Work and Pensions' agencies to reach a final decision on benefit claims, calling for the introduction of a 42 day time limit for decision-makers to respond to appeals in order to achieve greater fairness between the parties to an appeal;
- *Patients' Experiences of the First-tier Tribunal (Mental Health), May 2011 (Annex F)* —
A joint report undertaken with the Care Quality Commission, looking (for the first time ever) at the actual experiences of patients who applied to and appeared before the Mental Health Tribunal;
- *Right First Time, June 2011(Annex G)*—
An assessment of the quality of decision-making by public bodies, highlighting the low level of engagement in appeals and lack of feedback or learning. Drawing on examples of good practice, the report suggests practical steps to be taken by public bodies and calls for concerted action across central and local government. It also highlights the lack of data about the costs of poor-decision making, the need for new funding models and the potential savings of a "right first time" approach.

15. The AJTC has also engaged with the government on significant proposals that have an impact on administrative justice. Over the past twelve months, these issues have included:

- Legal aid reforms;
- Fees for immigration and asylum appeals;
- Welfare Reform Bill, and in particular proposals for a new statutory reconsideration process;
- Education Bill, and proposals for new Independent Review Panels to hear exclusion appeals;
- Special Educational Needs Green Paper.

16. The AJTC also seeks to work with stakeholders in the administrative justice system. As part of this, the AJTC Chairman acts as an independent Chair for the Mental Health Stakeholders Advisory Group and the War Pensions and Armed Forces Compensation Appeals Stakeholder Group.

PROPOSED ABOLITION OF THE AJTC

17. The AJTC is a listed body in Schedule 1 to the Public Bodies Bill, which is expected to receive Royal Assent later this year. The MoJ recently consulted on the proposed abolition and the outcome of this process is anticipated before the end of the year. The government appears to accept that the functions assigned to the AJTC are valuable but argues that these are functions already being performed by MoJ and HM Courts and Tribunals Service, rendering the AJTC unnecessary.

18. In its response to the consultation on abolition, the AJTC (**Annex H**) has argued that:

- despite the importance of administrative justice to citizens and the major challenges it presently faces, the issue is not given any real priority within government, whether in Business Plans or otherwise;
- the work of the AJTC is complementary to the governance arrangements in HMCTS and is not a duplication;
- *independent* advice cannot (as claimed) be replicated within a government department, especially when the subject matter concerns disputes between the citizen and government;
- inadequate account is taken of the wider UK dimension; and, that the savings from AJTC abolition are overstated.

FOUR KEY ISSUES FOR ADMINISTRATIVE JUSTICE

19. The AJTC considers that the leading key issue for administrative justice is how to embed a "*Right First Time*" culture across the public sector. The benefits of learning from mistakes and complaints have long been embraced by most of the private sector, but the culture of the public sector largely remains one of denial and/or defensiveness. The benefits of improved decision-making for users, for taxpayers and for decision-making bodies themselves clearly merit greater attention, especially at a time of financial austerity.

20. At the same time, the AJTC is deeply concerned about the increasing trend towards the introduction of fees for those wishing to appeal against governmental decisions. This is the wrong way to manage demand levels. It is especially ironic that fees are being introduced for individuals while departments generally do not contribute to the cost of tribunals by reference to actual caseload volume or outcomes. If departments had to pay for each mistake they make, that would be the quickest route to "Right First Time".

21. In view of the likely cuts to legal aid and advisory services, the AJTC also considers it imperative to understand the consequences of reduced advice, guidance and representation on user behaviour and the functioning of tribunals. In particular, it will be important to monitor the number of unrepresented and (increasingly) unadvised people appearing before tribunals, and to assess the impact of this on the fair and efficient delivery of administrative justice. To do justice, and keep costs down, tribunal judiciary and administrators will have to adapt current practices and approaches in order to accommodate the emerging needs and interests of such users.

22. On a number of occasions, the government has made clear its wish to develop new and proportionate dispute resolution models—not necessarily involving a traditional appeal hearing. The AJTC has been at the forefront of those supporting the development of proportionate and appropriate dispute resolution approaches, and is due shortly to publish a report on this subject. It believes that there already exists much good practice that could and should be built upon. In addition, it takes the view that any new approaches should be rigorously piloted and assessed prior to wider introduction.

CONCLUSION

23. The AJTC is committed to efficient and better decision-making and justice. We do not understand why the government wishes to abolish the AJTC, which at comparatively low cost, can contribute a great deal of expertise and experience while also bringing both government and the justice system closer to the needs of their users. The AJTC hopes that the Committee's inquiry will shed light on various unanswered questions, such as:

- What is the real reason for wishing to abolish the AJTC?
- Why does administrative justice have such a low status?
- How can MoJ officials provide independent advice?
- How will MoJ promote and safeguard the administrative justice system as a whole?
- How will the Right First Time agenda be carried forward?
- How will the MoJ ensure that the needs of users are properly understood and acted upon?

Annex A: Securing Fairness and Redress: Administrative Justice at Risk?

[http://www.justice.gov.uk/ajtc/docs/AJTC_at_risk_\(10.11\)_web.pdf](http://www.justice.gov.uk/ajtc/docs/AJTC_at_risk_(10.11)_web.pdf)

Annex B: AJTC Annual Report 2010–2011

<http://www.justice.gov.uk/ajtc/docs/AJTC-AR-2010-11-WEB-071111.pdf>

Annex C: The Developing Administrative Justice Landscape

http://www.justice.gov.uk/ajtc/docs/landscape_paper.pdf

Annex D: Principles for Administrative Justice

http://www.justice.gov.uk/ajtc/docs/principles_web.pdf

Annex E: Time for Action

http://www.justice.gov.uk/ajtc/docs/Time_Limits_final.pdf

Annex F: Patients' Experiences of the First-tier Tribunal (Mental Health)

http://www.justice.gov.uk/ajtc/docs/AJTC__CQC_First_tier_Tribunal_report_FINAL.pdf

Annex G: Right First Time

[http://www.justice.gov.uk/ajtc/docs/AJTC_Right_first_time_web\(7\).pdf](http://www.justice.gov.uk/ajtc/docs/AJTC_Right_first_time_web(7).pdf)

Annex H: AJTC response to Ministry of Justice consultation—"Public Bodies Bill: reforming the public bodies of the MoJ"

http://www.justice.gov.uk/ajtc/docs/AJTC_abolition__response_to_consultation__final_web.pdf

November 2011

Written evidence submitted by Brian Thompson, Senior Lecturer, School of Law, University of Liverpool and Member of the Administrative Justice and Tribunals Council (OAJ 02)

SUMMARY

- Importance of viewing administrative justice from the user's perspective,
- Which demonstrates the need for an integrated approach to administrative justice
- And the need for independence

1. I wish to add briefly to the points made in the AJTC's submission to the Committee. I do this as an advocate of an integrated approach to administrative justice who urged Sir Andrew Leggatt in his *Review of Tribunals* to extend his consideration beyond tribunals to the whole field of administrative justice.

2. Sir Andrew did recommend that the Council on Tribunals should have its remit extended and this happened with the creation of the AJTC following the passage of the Tribunals, Courts and Enforcement Act 2007.

3. In my teaching and research on administrative justice I was struck by the complexity which faced individuals who had a grievance with a public body. There was a variety of routes to redress complaints about service and maladministration to complaints procedures and then the possibility of an Ombudsman, and challenges about rights with appeals to tribunals or reference to inquiries or a possible court action.

4. These arrangements had gaps and overlaps with some redress routes leading to certain remedies which may or may not be the person's desired outcome even if successful.

5. If one looked at these arrangements as components in a system and particularly from the user's perspective then it would assist analysis and comprehension and the identification of topics for reform.

6. The 2007 Act introduces and defines the administrative justice system but this is more of an aspiration than a description of reality, as the various parts were not designed from a holistic approach but rather a piecemeal incremental approach.

7. The integrated approach to overview means that scrutiny is given to matters within and across boundaries. The boundaries occur:

- Within methods of redress
- Within methods of improving administration/initial decision-making
- Between redress and improving administration/initial decision-making
- Within devolved jurisdictions and relations with UK/GB/England & Wales
- Between public and private sectors.

8. The point about relations between the public and private sectors is that Public Services Ombudsmen are being given responsibilities in the private sector, e.g. the English Local Government Ombudsmen in the field of privately funded social care for adults. Delivery of public services is also conducted by private bodies and the courts in exercising judicial review consider the actions of public and private bodies carrying out public functions. Thus the oversight needs to include this within its remit.

9. One of the activities which the AJTC has carried over from the Council On Tribunal is visiting tribunals. These statutory visits allow AJTC members to observe not only the public hearing but also the deliberations of a tribunal in private.

10. This allows the AJTC to fulfil its role of considering the composition and working of tribunals as part of the overview of the administrative justice system and provides useful feedback to the Senior President of Tribunals on the user's experience.

11. Currently the AJTC is visiting some tribunals where the venue is a criminal court in order to assess the appropriateness of such courts for tribunal hearings. Tribunals are meant to be more accessible than courts and it is off-putting for some tribunal users when they learn that the tribunal is held in a criminal court.

12. The AJTC with the range of experience in its Members allied to the observation from the user's perspective can provide a useful independent opinion and it is perhaps this which led Parliament's Joint Committee on Human Rights in its 7th Report: *Legislative Scrutiny: Public Bodies Bill* (HL86/HC725 of 2010–11) at paras. 1. 28–29

The Judicial Appointments Commission; the Administrative Justice and Tribunals Council and the Legal Services Commission.

- 1.28 Each of these bodies plays a particular function in ensuring the effectiveness of the domestic judicial system...
- 1.29 ...The AJTC acts to ensure effective justice in the Tribunals system and the LSC to ensure fair access to legal aid. Functional and perceived independence of both of these bodies enhances the protection of the right to fair and equal access to justice, guaranteed in both the common law and international human rights law standards (e.g. Article 6 ECHR and Article 26 ICCPR).

13. The Ministry of Justice's consultation paper did not address the Joint Committee's view. The Ministry may disagree with it but in applying the test used in the *Review of Arms Length Bodies*, no reasons were given to support the Ministry's view that the AJTC did not meet the requirement of independence unlike the Civil Justice and Family Justice Councils.

14. I hope that what I have demonstrated is that there are roles and functions which should be discharged in the oversight of administrative justice. I suggest that the Ministry of Justice in its proposal to abolish the AJTC has been focusing on an institution rather than on roles and functions. I further suggest that the Ministry's proposed arrangements following abolition are inadequate to deal properly with these roles and functions and thus impair the achievement of an accessible, fair and efficient administrative justice system.

November 2011

Written evidence submitted by Dr Richard Kirkham, Senior Lecturer in Law, University of Sheffield (OAJ 03)

SUMMARY

My interest in the work of the Administrative Justice and Tribunals Council (AJTC) stems from my academic research into one of the dispute resolution mechanisms at the heart of the administrative justice system, the ombudsman. I wrote an article a year ago which explains in more detail my position ("Quangos, coalition government and the ombudsmen", *Journal of Social Welfare and Family Law*, 32: 4, 411—421). Here I summarise my thoughts.

CONTEXT

Administrative justice is an important aspect of the rule of law. Its importance stems from the size of the administrative state and the degree of direct impact it has on individual lives, both collectively and individually. During their lives a few people will directly experience the criminal justice system, some very closely; many will experience the family justice system; but it is probable that virtually everyone will have cause to interact with the administrative justice system. Broadly conceived, at an individual level the administrative justice system includes the promotion of our interests in relation to health services, education systems, welfare benefits and a whole array of public services that affect our daily lives.

In more than one country the importance of an individual's right to administrative justice is recognised by an express reference within the constitution eg,¹ By contrast, in the UK the significance of administrative justice has not always been given the prominence that it might. For instance, unlike in the USA where the courts are given an express authority to test administration against high procedural standards (the Administrative Procedure Act 1946), there is no statute that addresses the issue in general. Instead, in the UK we have a series of *ad hoc* measures that provide various unconnected elements of control and redress with the linked aim of providing for administrative justice. In addition, the courts have developed an increasingly coherent and systematic body of administrative law.

The end result of past innovations in the UK on administrative justice is a highly complex, and possibly overlapping system of administrative justice. It may be that the administrative justice system that we have ended up with is operationally perfect and designed in an admirable fashion. It may be that viewed from the perspective of the individual citizen, they have access to appropriate opportunities to pursue their grievances against public administration and suitable information about those opportunities. It may also be that viewed from the top downwards the system is organised in a rational, effective and cost-effective manner. The difficulty is that our constitutional mechanisms for ensuring that the administrative justice system is effective and effectively managed are not strong, and will become even weaker should the Coalition Government go through with its plans to abolish the AJTC.

THE ROLE OF THE AJTC

The history of the political management of the administrative justice system has been dominated by *ad hoc* reform and subject or institution specific review (this is a non-party political point as governments of all persuasions have overseen the administrative justice system this way). Much of this work has been commendable but the fear is that opportunities have been missed to understand and rationalise the system as a whole. Maybe such an approach is unnecessary, but the concern is that if the system were considered in a holistic fashion then alarming gaps and unnecessary duplications in justice provision would be discovered.

At present it is unclear who is responsible for strategic oversight of the administrative justice system. The Ministry of Justice is the most obvious government department, but aspects of the system come under the responsibility of other departments (eg, as with the ombudsman community for instance). Currently, there is no clear or convincing direction being provided by the government that the issue of overall oversight of the system is a matter of much concern to them. This is worrying as it will probably mean that the administrative

¹ See also the European Charter on Fundamental Rights.

justice system as a whole will not be managed and that instead the various institutions within the system will continue to be managed in an isolated and uncoordinated fashion.

The introduction of the AJTC was a measure to partially address this oversight problem. I offer no views at this stage as to how effective it has been, partly because its history has been too short to come to any firm conclusions. But the rationale for the organisation is strong. It was to provide the intelligent oversight of the system as a whole that is surely necessary given the importance of administrative justice to all members of British society. The body has only an advisory role, coupled with a small research and intelligence gathering capacity, but this specific statutory prioritisation of the issue of administrative justice represented a sizeable advance on the preceding situation. Moreover, the body was constituted of existing experts in the field and was thereby able to operate without the need for an extensive administrative support unit. The AJTC's existence, therefore, offered the potential for administrative justice issues and problems to be identified quicker than previously and solutions proposed in a more thoughtful manner.

ARGUMENTS FOR THE ABOLITION OF THE AJTC

It has been argued that the AJTC should be abolished to allow for the Government to take control of the administrative justice system. The difficulty here is that history suggests that governments only sporadically take administrative justice seriously, do not possess the appropriate knowledge base to undertake this function and do not always recognise their interests in taking this matter seriously. Thus abolition could well lead to administrative justice issues not being addressed adequately, which in turn could lead to flaws in the system become increasingly evident.

A further unspoken argument against proper oversight of the administrative justice system is that the output of oversight might lead to added expense for government. Thus it may be that there is a latent fear that citizens will be able to make more onerous demands on public authority or access enhanced financial remedies. Such a fear is expressed in several government contributions to consultations on administrative justice. But reforms to administrative justice systems do not necessarily mean that greater expense will be the end result. In Scotland recently a wide ranging review of the regulatory system was conducted which included coverage of elements of the administrative justice system. In this review, one of the key themes pursued was a rationalisation of the system.

A more up front argument made has been the potential to save money through the closure of the AJTC. I believe this argument has been subsequently down played. In any event, given the scale and importance of the administrative justice system, the sums involved in maintaining the AJTC appear inconsequential.

CONCLUSION

It is difficult not to be cynical about the decision to abolish the AJTC. The decision appears motivated by a dogmatic desire to cull unelected institutions from the public sector rather than a reasoned cost-benefit assessment of what the AJTC can contribute to good governance. The Public Bodies Bill has been much improved by the intervention of the House of Lords but the wider review of public bodies has been an unfortunate experience, with the manner in which the AJTC has been dealt with just one example. To conclude, I cannot see any good reason to abolish the AJTC and the process by which this decision has been made has lacked rationality and been a poor example of good government. Further, I predict that, if abolished, at some time in the near future a body with a broadly equivalent remit to the AJTC will have to be established following increasing evidence of disfunctionalism in the administrative justice system.

November 2011

Written evidence submitted by Parliamentary and Health Service Ombudsman (OAJ 04)

As the UK Parliamentary Ombudsman, I very much welcome the Committee's inquiry into the Government's plans for future oversight of the administrative justice system and I value the opportunity to submit written evidence to the Committee.

I recently responded to the Ministry of Justice's consultation on their plans to abolish the Administrative Justice and Tribunals Council (AJTC) as part of its programme of reform of public bodies.

My opinion, set out in that response, remains that the abolition of the AJTC is a regressive step and that the Ministry of Justice is not equipped to provide the oversight role that the AJTC has performed.

INTRODUCTION

1. As the Committee will probably be aware, the UK Parliamentary Ombudsman is an ex officio member of the AJTC, and a member of both its Scottish and Welsh Committees.

2. I have been the UK Parliamentary Ombudsman since November 2002. In that capacity I have served as an ex officio member of the Council on Tribunals, and its Scottish Committee; and its successor, the Administrative Justice and Tribunals Council, and both its Scottish and Welsh Committees.

3. I was also heavily involved, as a member of the Executive Committee of the British and Irish Ombudsman Association (BIOA), in the extensive contribution BIOA made to the 2004 White Paper, *Transforming Public Services: Complaints, Redress and Tribunals*, which led to the establishment of the AJTC. I spoke at its launch in 2007.

4. I would also add that from 1997 to 2002 I was Legal Services Ombudsman for England and Wales—an associated office of the Ministry, in its former guise as the Lord Chancellor’s Department—which brought me into extensive contact with Ministry of Justice officials.

5. I therefore have a uniquely UK-wide, long-standing and broad perspective.

6. I am both bewildered and dismayed by the proposed abolition of the AJTC. I am bewildered because administrative justice is so important to the relationship between citizen and state. The outcomes of decision-making by a wide range of public bodies on a daily basis affect family incomes, jobs, healthcare, housing, education and much, much more. Citizens are just as likely, if not more likely to come across administrative justice issues in their ordinary lives than civil, or even family justice issues. In the circumstances I find it inexplicable that the Ministry is proposing to abolish the AJTC whilst retaining the Civil Justice Council and the Family Justice Council.

7. I am dismayed because I believe that the AJTC’s abolition would have a deleterious impact on the delivery of administrative justice in the UK, on the relationship between citizen and state, and on the ongoing process of devolution.

ABOLITION OF THE AJTC

8. At the launch of the AJTC in November 2007, I observed that:

“Today is an important landmark—and a turning point—in the history of administrative justice in this country. This is a tremendous, long awaited and much needed opportunity to start to develop a system of administrative justice which is accessible, fair, effective and efficient—certainly; but which is also comprehensive, coherent and co-ordinated; which learns from experience; which drives improvements in administrative practice; and which builds public confidence.”

9. I am still of that view and therefore consider the proposed abolition of the AJTC to be a regressive step.

10. First, the AJTC was the first, and so far only, public institution to have in its sights the administrative justice “system” as a whole, not just a part of it, like its predecessor the Council on Tribunals. In that context it has enjoyed a privileged overview of the system in all its parts: administrative court, tribunals, ombudsmen and first-instance decision-makers.

11. Secondly, the AJTC has a particular eye for the user perspective and reflects that perspective in its composition.

12. Thirdly, from my unique perspective I can say with confidence that the AJTC is the only organisation that has a UK perspective on administrative justice. The interlocking relationship between the Council itself and its Scottish and Welsh Committees, alongside its strong contacts with administrative justice in Northern Ireland, enables the AJTC to stay close to developments within each nation, as well as to the different perspectives that each nation has on matters of common concern. As a result, the AJTC has a unique role to play as the devolution settlement continues to evolve, with all its constitutional complexity.

ABILITY OF THE MINISTRY OF JUSTICE TO CARRY OUT THE FUNCTIONS OF THE AJTC

13. My extensive contact with the Ministry of Justice, in its various guises over many years, gives me no confidence whatsoever in the ability of the Ministry to assume the functions of the AJTC. However well-meaning and diligent individual officials may be, the Ministry simply lacks the institutional history, capacity and technical knowledge to do so.

14. I therefore consider that none of the core functions of the AJTC will be adequately covered by the Ministry. There will not be a competent organ of government to keep under review the administrative justice system as a whole; nor will there be anybody with the capacity and expertise to keep under review, and report on, the constitution and working of “listed” tribunals or of statutory inquiries.

15. I do not believe that the Ministry would be able to bring to the task of considering how to make the system more accessible, fair and efficient anything like the resourcefulness and expertise of the AJTC. The capacity for envisioning the future development of administrative justice and for formulating proposals for change and research would be hugely, and irreversibly, depleted.

16. In addition, the fact that the Ministry is a government department means that, by definition, it lacks the essential independence of judgment and freedom of action to challenge policy proposals as enjoyed by the AJTC. That factor alone undermines the ability of the Ministry, or indeed any other central government department, to replicate the AJTC’s current function.

 IMPACT ON THE OMBUDSMAN

17. When the Parliamentary Ombudsman was established by statute in 1967, the expectation was that the Ombudsman would be integral to the wider system of administrative justice that was beginning to emerge in the aftermath of the Franks Report in 1957.

18. Although the number of ombudsmen and other complaint handlers has grown significantly in the interim period, and although the administrative justice system as a whole has continued to evolve, with the exception of the AJTC there has never been a public institution charged with the task of ensuring a due measure of coherence and integration.

19. The existence of the AJTC has provided the Parliamentary Ombudsman in particular, and ombudsmen and complaints handlers in general, with a forum for forging a shared outlook with other parts of the system, and for achieving a voice that is independent of government and that has the interests of ordinary citizens as its focus.

20. The abolition of the AJTC would therefore have the direct impact of denying the Parliamentary Ombudsman such a forum and such a voice, and thereby of depleting the efforts of the Ombudsman to shape the administrative justice agenda by reference to the empirical experience of handling citizens' complaints.

I stand ready to assist the Committee with the Inquiry in any way I can and to offer further written or oral evidence if the Committee would find that useful. Please do not hesitate to contact me if you require any additional information or clarification.

November 2011

Written evidence submitted by Dr Jeff King, University College London (OAJ 06)

I have attached a copy of a letter sent to various members of the Government on 4 October 2010 concerning the concern by a range of public law academics over the proposed cutting of the Administrative Justice and Tribunals Council. I should note that my affiliation in that letter is recorded as Balliol College, Oxford, but I have since that time moved on to University College London.

I would like to point out here that many of the signatories of that letter are the most senior professors of public law in the country. They include the writers of leading treatises (Paul Craig, David Feldman, Mark Elliot, Maurice Sunkin, John Bell) or influential monographs (Sandra Fredman, TRS Allan, Simon Halliday), some eminent contributors and to public policy (Dawn Oliver, Member of the Wakeham Commission on House of Lords Reform (1999), David Feldman, Legal Adviser to the JCHR, former Dean of the Law Faculty at Cambridge), and producers of important empirical studies that have been relied upon by the Law Commission and other public bodies working on administrative justice reform (Simon Halliday, Varda Bondy).

I should in fairness mention that the office of Jonathan Djanogly MP did send a letter in reply to this, by post, which claimed to refute all the points in the letter. I believe the reply was in good faith, but its central claim—that the Ministry of Justice could absorb the AJTC's functions effectively—merely rejected without convincing argument or independent evidence all the claims made in the attached letter.

The attached letter basically reduces to three key points. First, that the AJTC's functions are essential to the system of administrative justice. Second, that there is no evidence at all that the MoJ could perform those tasks any more cheaply, or that the AJTC is not delivering value for money. Third, there is good reason to believe that the MoJ would not carry out those essential functions as effectively as the AJTC.

Letter to Rt Hon George Osbourne MP, Chancellor of the Exchequer, Rt Hon Kenneth Clarke MP, Lord Chancellor and Secretary of State for Justice, Mr. Jonathan Djanogly MP, Parliamentary Under-Secretary of State for Justice, and Rt Hon Nick Clegg MP, Leader of the Liberal Democrats

RE: THE ABOLITION OF THE ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL

Dear Mr. Osbourne,

We are writing today to express concern over the leaked statement indicating that the Government plans to abolish the Administrative Justice and Tribunals Council (AJTC). We do not here question the importance of the Government's drive for economies. However, as legal academics, having the benefit of an historical understanding of administrative justice and the statutory framework governing tribunals and inquiries, we believe that the move could be a serious setback for administrative justice and may in fact lead to *greater* expenditure.

The point of the tribunal system, which began piecemeal before the First World War, was to ensure that millions of citizens with disputes concerning statutory entitlements could have recourse to adjudication that is quick, efficient, and fair. The system was designed to be both cheaper and fairer than courts. The system was overhauled by the Tribunals and Inquiries Act 1958 (passed under the Macmillan Government after the receipt of an important Report of a commission headed by Oliver Franks). The Report found that tribunals should be considered in principle to be part of the machinery of adjudication rather than administrative organs of the departments they reviewed. But the Report acknowledged the distinctive, non-judicial virtues of tribunals. The “central proposal”² of the Report was that there should be a permanent Council on Tribunals to provide general oversight, consisting of legal and lay representation, the latter being predominant. The 1958 Act created the Council, whose oversight reflected the tribunal system’s distinctive origins, culture, and delicate balance between bureaucratic efficiency and fairness to users. The Council provided such oversight for nearly half a century.

The Tribunals, Courts and Enforcement Act 2007 unified the tribunal system by removing them from the departments and formally placing them under the wing of the Ministry of Justice (MoJ)(formally through the Tribunals Service, an executive agency of the MoJ). However, the Act continued to recognise the distinctiveness of tribunal adjudication, and also sought the greater use of non-judicial approaches to what the 2004 White Paper called “proportionate dispute resolution.”³ The newer use of the term “administrative justice” intended, among other things, a greater emphasis on “moving out of courts and tribunals disputes that could be resolved elsewhere” (para. 1.13), chiefly through mediation, arbitration, and the involvement of the various ombudsmen. This was viewed as both *cheaper* for the state and *better* for users. These changes required reinvigorated oversight and a body to generally “keep under review” (TCE Act 2007) and advise upon the operation of the administrative justice system. The Council on Tribunals was thus replaced with the AJTC, which *expands and fortifies* the role previously played by the Council on Tribunals.

The seminal, pre-White Paper Report by Sir Andrew Leggatt called the proposed AJTC “the hub of the wheel of administrative justice.”⁴ This metaphor makes explicit the central, pivotal role the AJTC is meant to play in the new system.

The logic of your Government’s position may be that the MoJ can provide any needed oversight and advice. We believe this would be a grave mistake for the following reasons:

1. *The AJTC is crucial for ensuring the distinctiveness of tribunals from the common law judicial process*

- Tribunal judges use a non-adversarial, or managerial, approach that is meant to assist the parties with their submissions. Parties are frequently unrepresented and research has shown this has a large impact on success rates. The more interventionist judging model is crucial for meeting, at least half-way, the mounting calls for state-funded legal representation before the tribunals.⁵ The more tribunals are viewed as courts, the more unsustainable the restricted access to Legal Aid will become.
- The administrative justice landscape was explicitly meant, in the new system, to move beyond adjudication, for reasons of economy and justice. This orientation is distinctive and requires specialist review and guidance.

2. *The MoJ will not presently be able to perform the same function*

- This distinctive culture is likely to be overlooked at the MoJ without the benefit of the AJTC expertise. In our experience, understanding the administrative justice field requires being conversant in a body of empirical literature and/or field experience in public administration.
- Presently, the AJTC brings together people with expertise and extensive experience in areas that include experience in law and social science, the civil service, the Parliamentary Commissioner for Administration, advice sector and elsewhere. It is doubtful the MoJ could replace this expertise. The Council reviews the rules and operations of the tribunals, inquiries and other areas of the “administrative justice system,” something intentionally broader than the tribunals service. The AJTC regularly reviews legislation and regulations, and there is a statutory obligation for Ministers to consult the Council before adopting new rules for listed tribunals (TCE Act 2007, Schedule 7, Part III). Furthermore, the AJTC has special knowledge of how administrative justice connects with devolution arrangements. Again, there is little evidence that the MoJ has the capacity to absorb all these functions without the benefit of AJTC guidance.

² HW Wade and CF Forsyth, *Administrative Law* (10th Edn, OUP 2010) p.773.

³ *Transforming Public Services: Complaints, Redress and Tribunals* (Cm. 6243 (2004)) (<http://www.dca.gov.uk/pubs/adminjust/transformfull.pdf>).

⁴ Report of the Review of Tribunals by Sir Andrew Leggatt, *Tribunals for Users: One System, One Service* (2001)(<http://www.tribunals-review.org.uk/leggatthtm/leg-00.htm>)paras. 7.45–7.51.

⁵ Calls that were rejected by the Leggatt Report (para.4.21–4.28). The calls continue in earnest P Draycott and P Hynes, “Extending Legal Aid to Tribunals” (2007) (June) Legal Action 6–7.

3. *The AJTC provides excellent value for money, and it plays a role in reducing the costs of dispute resolution*

- Even if the MoJ could ultimately take on such a role, it would not represent any greater value for money. The AJTC budget is approximately £1 million a year, over £400,000 of which is paid to MoJ and Scottish Government staff seconded for that purpose.⁶ That is excellent value for money for the oversight of a system in use by probably a majority of the population at some point in their lives.
- As noted above, a key theme in the history of tribunal adjudication and in the recent reforms was keeping costs low. The AJTC facilitates this by exploring cheaper, less formal dispute resolution options that involve a lower likelihood of appeals than would be the case in a more judicialised model. MoJ staff, lacking the range of expertise of AJTC staff, would not be able to do this.

The upshot of all of this is that if the AJTC did not exist, the Government would have to invent it. Its functions cannot be entirely absorbed by the MoJ at the present time. And it delivers value for money.

We have phrased most of our concerns in terms of cost-savings and the logic of streamlining services, but we also believe your Government is alive to the concerns of fairness and justice proper. As frequent critics of bureaucracy, your Government is aware of the potential for injustice in the administrative state, and the need for fair redress. Both parties in the Coalition Government are well aware—indeed are perhaps champions—of the need to maintain public confidence in administration. The AJTC plays a pivotal role in doing so in the most efficient manner available. We therefore strongly urge you to reconsider your position.

Yours respectfully,

Prof Trevor Allan, University of Cambridge, *John Allison*, Queen's College, University of Cambridge, *Prof John Bell*, Pembroke College, University of Cambridge, *Varda Bondy*, Public Law Project, *Tom Cornford*, University of Essex, *Prof Paul Craig*, St. John's College, University of Oxford, *Anne Davies*, Brasenose College, University of Oxford, *Mark Elliot*, St. Catherine's College, University of Cambridge, *Prof David Feldman*, Downing College, University of Cambridge, *Prof Sandra Fredman*, Exeter College, University of Oxford, *Prof Simon Halliday*, University of Strathclyde, *Jeff King*, Balliol College, University of Oxford, *Prof Peter Leyland*, London Metropolitan University, *Prof Dawn Oliver*, University College London, *Prof Maurice Sunkin*, University of Essex

Written evidence submitted by Ministry of Justice (OAJ 07)

EXECUTIVE SUMMARY

1. The Ministry of Justice welcomes this Inquiry by the Public Administration Select Committee into oversight of the administrative justice system. The Department is committed to developing a strategic, UK-wide approach to the administrative justice system, to ensure that where disputes do arise, proportionate, timely and cost effective solutions are provided, and lessons are learned in order to effect continuous improvements in the system as a whole and drive up the quality of initial decision-making. The Department is in the process of identifying the priority areas and allocating the resources needed to take them forward.

THE ISSUE

2. This memorandum has been prepared in response to the announcement by the Public Administration Committee on 26 October that it would be holding a short enquiry into Government oversight of the administrative justice system.

ADMINISTRATIVE JUSTICE POLICY IN THE FUTURE

3. The Department is undertaking an existing programme of work, and has teams currently organised around four broad themes:

- The creation of new appeal rights, new jurisdictions and support for the transfer into HM Courts and Tribunals Service (HMCTS) of existing tribunals and bodies. This includes working with other government departments on policy development and the requirement for an appeal right or other form of appropriate redress and supporting the delivery of projects such as the creation of a First-tier Tribunal, Property, Land and Housing Chamber.
- Support for the Tribunal Procedure Committee including the provision not only of secretariat support for the committee itself but also the interface between the committee, officials and key stakeholders and the management of the statutory instrument process seeing rule changes through to their commencement.
- Strategic policy issues which cut across the administrative, civil and family jurisdictions—including proportionate dispute resolution, mediation, greater use of technology, and the information available for users.

⁶ Administrative Justice and Tribunals Council, Annual Report 2009, p.40 (<http://www.ajtc.gov.uk/docs/Final.pdf>). Members' retainers and travel costs amount to £292,228, whereas other Agency Costs amount to £103,907. A complete breakdown is available on p.40 of the Annual Report.

- Working with other government departments to keep the whole of the administrative justice landscape under review, whether within central or local government ownership. For example, MoJ is working in partnership with the Department for Work and Pensions and its agencies to improve first stage decision-making, for the benefit of the user and to reduce the pressure on the appeals system, by reviewing end to end dispute resolution and feedback arrangements. The Department will spread lessons learned among decision making bodies to drive up standards.

4. The Department also works closely with the Cabinet Office on ombudsman policy, and works collaboratively with the Parliamentary and Health Service Ombudsman. Whilst maintaining the independence of the ombudsmen these interactions enable the Department to be in a good position to raise the profile of other public service ombudsmen across Whitehall. The Department also works closely with the devolved administrations to develop an overview of the wider system, across the UK, sharing best practice and ensuring appropriate consistency in rules and processes. There is also cross-border judicial oversight, coordinated by the Senior President of Tribunals.

5. The views of users will continue to form a central part of how the Department exercises its policy responsibility for the administrative justice system. The Department does, and will continue to, take account of the views of service users. It will consult widely with experts, including those who represent users, as part of the policy formulation process. This is in addition to the user groups which almost all jurisdictions have, and which enable users to discuss issues of concern with the judiciary and HMCTS management. These groups operate at national and local levels, and bring together representatives of the public who use tribunals services, professional groups (such as the Bar and Law Society), the judiciary and officials.

6. The Public Bodies Bill, which is nearing the conclusion of its Parliamentary passage, includes provision to abolish, by order, the Administrative Justice and Tribunals Council (AJTC). As the Government has made clear in its consultation paper and during the passage of the Bill, whilst it appreciates the work undertaken by the AJTC in respect of administrative justice, in particular the support provided to the development of the unified Tribunals Service, it believes the functions performed by the AJTC are either no longer required, or more properly carried out by Government.

7. The Department is of the firm view that the development of administrative justice policy is properly the function of Government. An advisory body working in this area means duplication of effort and resources. While the AJTC is an arms length body, the Government's view is that independence in this sense is not a prerequisite for policy advice on administrative policy, just as it is not for any other policy area; officials, working in close consultation with stakeholders, can provide Ministers with balanced, objective, impartial and expert advice. The abolition of the AJTC will also deliver financial savings.

8. In reviewing the Ministry of Justice's arm's length bodies, including the AJTC, Ministers took into account cost, comparative value for money and whether a body's functions are still required when deciding whether to include them in the Bill. This review concluded that the AJTC should be abolished, but that some other of the Department's arm's length bodies, including the Civil Justice Council (CJC), should remain. During the Bill's passage, it has been suggested that the AJTC could be merged with the CJC. The Department is not persuaded by the arguments for this. While there is some similarity, the roles of both bodies are distinct. Unlike the AJTC, the CJC is judicially led and responsible for overseeing and co-ordinating the modernisation of the civil justice system in England and Wales. The CJC does not have the same duplication of functions with the Department in relation to administrative justice. To widen the remit of the CJC so dramatically by combining it with the AJTC would alter its dynamic and make it unwieldy: the administrative justice system includes not only appellate courts but also complaint handlers, mediators, ombudsman and tribunals which are distinctive in character from the courts. All remaining NDPBs, including the CJC, will be reviewed every 3 years. These reviews will look afresh at the fundamental questions of whether the functions of the body are still needed, and if so whether the body is the right mechanism to carry them out.

9. The Department is grateful not only for the valuable contribution of the AJTC, its commitment to reform of the administrative justice system and the expertise it brings together, but also the constructive engagement at official level as it continues to plan the future programme of work. This will include how to further build on the foundations laid by the 2004 white paper, *Transforming Public Services: Complaints, Redress and Tribunals*, and the valuable AJTC legacy, not least the recommendations in its most recent report; *Promoting Fairness and Redress: Administrative Justice at Risk?*

CONCLUSION

10. In conclusion, the Department is well placed to undertake the oversight of and drive improvements in the administrative justice system, across the UK. Locating responsibility for administrative justice within the Justice Policy Group ensures it forms a key part of the wider justice reform agenda while at the same time proper consideration is given to its distinctive nature and the particular issues that arise. It is committed to driving up the quality of original decision making and ensuring that where individuals wish to challenge decisions, there is a clear, simple, timely, cost-effective and fair means for them to do so. It welcomes the view of this Committee on priorities for the future.

Written evidence submitted by PCS (OAJ 08)

INTRODUCTION

1. The Public and Commercial Services union (PCS) is the largest trade union in the civil service with over 280,000 members in the civil service associated private bodies. This includes over 15,000 staff working in the Ministry of Justice (MoJ). We represent staff across a number of grades in the Administrative Justice and Tribunals Council (AJTC).

2. PCS believe, as does the AJTC Chairman Richard Thomas, that the AJTC should not be abolished and its functions should be placed within the MoJ. Placing the roles and functions within the MoJ does not make sense as it would effectively mean that the Ministry would be its own watchdog.

THE ROLE OF THE AJTC

3. The AJTC is fundamentally important to citizens, particularly those who are the victims of procedural error, cancelled and badly administered tribunals. In the past the Chief Executive has had to apologise for an inefficiently run Tribunals Service, delayed papers to the judiciary.

4. The AJTC is an independent body that acts as a watchdog to different tribunals and ombudsmen that work to different departments and particularly the tribunal services that are part of the MoJ. Under current proposals in the Public Bodies Bill this body faces being abolished and some of its scrutinising roles being taken in to the Ministry of Justice. This would undermine the vital independence of the organisation.

5. The AJTC carries out its function through oversight of the organisations, with whom over the years they have built up important trust and relationships, and through proactive policy work such as the recent work on “right first time decision making”.

6. Increasingly the decisions made by tribunal services are being called into question with half of immigration cases being overturned on appeal and 42% of child support settlements being changed.

PCS CONCERNS

7. The MOJ is imposing severe and most likely debilitating cuts within Her Majesty’s Courts and Tribunals Service. These cuts could damage the very delivery of a legal system that this country has provided for many years.

8. Citizens and taxpayers need an independent body to ensure that their elected representatives and the judiciary do not exceed their powers. The abolition of the AJTC will be a mistake particularly at a time of upheaval and when there is increasing applications to tribunals and the proposed legal cuts which will, as Baroness Scotland of Asthal pointed out during the report stage debate of the Public Bodies Bill, “contribute to increasing delays in courts and tribunals that are already under pressure”.

9. Future proposals to increase unfair dismissals from one year to two years and charge fees to applicants will increase the importance of having a government body that can properly scrutinise tribunals. We are concerned that an abolished or “gagged” AJTC would be either an absent or toothless watchdog. The government has suggested that champions such as “Which?” magazine could take over the role of the AJTC. PCS believe that it makes no sense to replace a watchdog of the tribunals with a consumer magazine. “Which?” is a consumer group which only advise on bringing action under the Consumer Protection Act, an Act that does not cover Public Bodies.

10. It also should be noted that in the areas of civil and family justice the government has recognised the continuing need for an independent arms-length advisory body. It should not therefore be pressing ahead with the abolition of the AJTC.

11. It is at this very moment that the AJTC is needed to ensure that any changes or reforms do not result in a badly administered tribunal services which could result in increased travesties of justice.

12. On the aspect of savings, the AJTC has an annual budget of £1.3 million per year and its role in advising and warning the Ministry of potential travesties of justice or procedural mishaps would save the taxpayer millions if not more. As its arms length status makes it completely independent and not politically motivated the AJTC will not be pressurised by the judiciary, senior civil servants in the Ministry Of Justice or Ministers.

13. The Government has not attempted to cost its “dedicated team” in MoJ. The team is responsible for “business as usual” recently transferred from the Tribunals Service, providing support to the Tribunal Procedure Committee and creation of the new Property Lands and Housing Chamber of the First Tier Tribunal. The resource available to replace the work of the AJTC appears to amount to little more than one or two newly-appointed officials who have administrative justice policy as part of their wider portfolio. There is no guarantee that even this resource will be retained for any length of time as the re-structuring of the MoJ’s justice policy group is still ongoing, with the risk that the staff concerned will be reallocated to work regarded as a higher priority at any time, as has already happened this year. It seems to us highly likely that this small resource will quickly be lost because administrative justice does not feature in MoJ’s published strategic plans. We do not accept that an advisory council of sixteen experienced and well-connected administrative justice experts,

supported by a small team of dedicated policy officers, can easily be replaced by the full-time equivalent of less than two civil servants.

14. It is concerning why the AJTC is being abolished since the volume of appeals has risen dramatically in the last few years and particularly in the Tribunals. It is also notable that the AJTC is shortly to publish a report that will challenge the government to recognise the scale of unnecessary cost generated by its own actions. The report will be critical of complex and badly drafted laws in some areas of administrative justice without strategic action to improve it.

15. It will also record their concerns about recent policy trends which create barriers to justice, including the reduction in legal aid, the introduction of fees and the unacceptable and growing delays in providing hearing dates for appeals.

16. There is surely an imperative need to have an arms length body to act as a government and judicial watchdog such as in a case where a Minister is alleged to have a conflict of interest in the reduction of legal aid and the insurance industry.

17. PCS believe that the government has also failed to take into consideration the fact that there are different types of Tribunals in Scotland, Wales and Northern Ireland. In its creation of HMCTS it has rushed ahead with the creation of an organisation which takes no consideration of Scotland's different legal system and even "reserved" Tribunals, yet the HMCTS has control over Scottish Tribunals and the HMCTS exists for England and Wales. The unification of the courts and tribunals judiciary in and England and Wales under the Lord Chief Justice will have implications for cross border sitting. It seems that there was not enough consultation with the judiciary on this matter.

18. Tribunals are not just run by the MoJ. There are different tribunals spread across different government departments and local authorities. The AJTC has the skills and experience to oversee these tribunals and offer advice on improvements independently. These skills and experience cannot be guaranteed if it is abolished and its current functions are moved into the MoJ.

15 November 2011

Supplementary written evidence submitted by Ministry of Justice (OAJ 09)

Administrative Justice and Tribunals Council

I am writing following the evidence session, on 22 November, about the possible publication of the proposals for the oversight of administrative justice and the net savings that might be achieved from the proposed abolition of the Administrative Justice and Tribunals Council (AJTC).

TRANSITION FROM AJTC

The Committee asked for further information about how I intend to "retain the best of what the AJTC has to offer", and about the timescale for this.

The department is still finalising its longer term plans for administrative justice, through discussions with a range of stakeholders including senior judiciary, the AJTC and others. The views of this Committee will also inform this. As part of this, consideration will be given to the best mechanisms for engaging with stakeholders and drawing on expertise. As I indicated when I met the Committee, and as Lord McNally made clear in the debate on the Public Bodies Bill on 23 November, we propose to establish a group of administrative justice experts and key stakeholders—particularly those who represent the views of users. In practice, this will very likely include some people who are currently AJTC members, as well as others, such as representatives of advice agencies and key government departments. Such a group will provide a valuable forum for sharing information and best practice, and will be used to test policy ideas, and initially, to help prioritise the administrative justice work programme.

The ongoing discussions to inform longer term plans will also include whether the department should publish any policy papers, or as was suggested in the debate in the Lords, whether regular published reports would be valuable.

When I gave evidence, on 22 November, the Committee asked specifically whether I intended to publish a White Paper or similar document that would set out the proposals for the oversight of administrative justice if the AJTC is abolished.

I can inform the Committee that a great deal of work is already underway in developing a strategy and programme of work with regard to the oversight of administrative justice. This is being informed by the recommendations in the AJTC's recent reports and ongoing constructive dialogue with stakeholders including the AJTC.

I do not want to pre-empt outcome of these discussions and this planning work. I would very much welcome the opportunity to consider the Committee's report before I decide on the best way to share the government's thinking and engage those with an interest. Once I have considered the report and taken this view, I will write

again to the Committee. I anticipate that we will be in a position to share more detailed plans for our future strategy with all relevant stakeholders early next year.

NET SAVINGS

More recent estimates suggest that on average MoJ will save approximately £1.4 million per annum from the closure of AJTC's operations over the next ten years. This is based on a 2010–11 budget of £1.2 million, uprated for inflation and adjusted for the previous years under-spend.

I acknowledge that the AJTC have challenged this figure and have adopted the view that the actual saving that will be realised from the AJTC's abolition is likely to be in the order of £0.9 million per year. AJTC's estimate is lower than MoJ's because it uses a different base year to estimate the savings.

I can assure the Committee that if AJTC staff are redeployed within the Ministry of Justice this will not incur additional staff costs nor impact on the level of savings realised.

One factor that might reduce the amount of savings achieved is the deferral of AJTC's closure date. Closure, which we expected to take place by March 2012, is now unlikely to take place before summer 2012 thus reducing the level of saving in 2012–13.

Given the uncertainties surrounding the date of closure and the number of staff who will be redeployed, it is difficult, at this time, to estimate the net savings that will be achieved. However, I have no doubt that significant savings to the taxpayer will be realised.

I will be able to update the Committee with further information about the net savings realised from the proposed abolition of the AJTC as more information becomes available.

JUSTICE COUNCILS

You also asked for a note on the various councils covering the different parts of the civil justice system. This is attached at Annex A.

These bodies were established at different times and for different reasons, as part of wider changes in each area of the civil justice system. Their individual development to a large extent determined their role and constitution, and explains current differences.

The CJC was established following Lord Woolf's review of the civil justice system. In his first report on the reform of the civil justice system in [1995], Lord Woolf recommended the creation of a statutory, judicially-led council to lead the reforms, and to be responsible for ongoing review of the system. In part, it was based on models from other commonwealth jurisdictions which he had observed. It continues today to provide judicial leadership in this part of the justice system.

The non-statutory Family Justice Council was established slightly later in 2004, in response to a need to facilitate better cross-agency working. You will be aware that as part of the recently published Family Justice Review, it was recommended that the future role of the FJC be considered in light of future plans for improved leadership and management of the family justice system. The Government is currently considering the Review's recommendations and will be publishing a response in due course.

The AJTC, the successor to the Council on Tribunals, was created by the Tribunals Courts and Enforcement Act 2007, which also provided for the creation of the unified tribunals structure we now have, as well as the establishment of the Tribunals Service, now Her Majesty's Courts and Tribunals Service. This significant phase of tribunal reform is now well-embedded.

Each part of the justice system also has a procedure rules committee. I undertook to give the Committee further information about these. The Tribunal Procedure Committee (TPC) is an advisory Non-departmental Public Body (NDPB), as are the other rule committees covering Civil and Family Law. It was established in May 2008 under Schedule 5 to the Tribunals, Courts and Enforcement Act 2007 (the Act). Its purpose is to make Rules governing the practice and procedure in the First-tier Tribunal and Upper Tribunal.

The membership of the TPC is governed by Part 2 of Schedule 5 to the TCE Act. Appointments to the committee are made by the Lord Chancellor, the Lord Chief Justice of England and Wales, and the Lord President of the Court of Session. Appointments made by the Lord Chancellor, as ministerial appointments, are regulated by the Office of the Commissioner for Public Appointments (OCPA). Currently, one of the members of the TPC is nominated by the Administrative Justice and Tribunals Council (AJTC). Consideration is being given to how best to provide for the voice of the tribunal user to be heard on the committee in the absence of an AJTC nominee.

The TPC has produced its first annual report (2010–11), which can be found on its web page: <http://www.justice.gov.uk/about/moj/advisory-groups/tribunal-procedure-committee.htm>

Finally, copies of the correspondence you requested are enclosed.

ROLE OF & THE CIVIL JUSTICE COUNCIL

BACKGROUND

The Civil Justice Council (CJC) is an independent Advisory Public Body, funded by the MOJ. It was established under the Civil Procedure Act 1997 with responsibility for overseeing and co-ordinating the modernisation of the civil justice system. Since 1 October 2010 it has been sponsored by the Judicial Office, the body of civil servants set up to support the Judiciary following the Constitutional Reform Act 2005.

ROLE

The CJC provides advice to the Secretary of State, the Judiciary and the Civil Procedure Rule Committee on the effectiveness of aspects of the civil justice system, and make recommendations to test, review or conduct research into specific areas.

The CJC meets at least three times a year and agrees formal responses to consultation papers and well as working with government on the detail of policy design (eg most recently on the detail of Lord Justice Jackson's reforms to the cost of civil litigation which the department is taking forward). It also plays a mediating role, bringing different sides together as demonstrated by its role in mediating agreement to the Road Traffic Accident protocol for low value personal injury claims, and the fixed costs within it.

Members appointed to serve on the CJC follow the code of practice of the Office of the Commissioner for Public Appointments (OCPA) and are unpaid.

Membership of the CJC is made up from the following groups

- The MR (who is the chair).
- Members of the Judiciary.
- Member of the legal professions.
- Civil servants concerned with the administration of the courts.
- Persons with experience in and knowledge of the lay advice sector.
- Persons with experience and knowledge of consumer affairs.
- Persons able to represent the interests of particular kinds of litigants (for example business or employees).

Executive Committee Members of the CJC are

- The Master of The Rolls.
- Alistair Kinley.
- Deborah Prince.
- HH Graham Jones.
- John Pickering.
- Peter Smith.
- Abigail Plenty.

Funding of the Civil Justice Council

- The Civil Justice Council is funded by the Ministry of Justice.
- Its budget for 2011/12 is £68,000.

ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL

Background

The Administrative Justice and Tribunals Council (AJTC) is an Advisory Non Departmental Public Body funded by the MoJ. It was established by the Tribunals, Courts and Enforcement Act 2007. The Council was set up under the Tribunals, Courts and Enforcement Act 2007 with a role to keep under review the administrative justice system, to consider how it might be made more accessible, fair and efficient and to advise the Lord Chancellor, Ministers of the devolved administrations in Scotland and Wales and the Senior President of Tribunals accordingly.

Role

The AJTC, which cover England, Wales and Scotland, has certain statutory functions. Its key functions can be summarised as: keeping the overall administrative justice system and most tribunals and statutory inquiries under review; advising ministers on the development of the administrative justice system; putting forward proposals for changes and making proposals for research.

The Council meets monthly and produces reports on specific topics; responds to consultations and; monitors the Government's legislative programme. Members also observe tribunal hearings.

Members, who are remunerated, are appointed to serve on the AJTC after an open and transparent recruitment process which complies with the Code of Practice of the Office of the Commissioner for Public Appointments.

Constitution

The membership of the Council is governed by Schedule 7 of the Tribunals, Courts and Enforcement Act 2007. The Council Comprises:

- Richard Thomas CBE, Chairman.
- Richard Henderson CB, Chairman of the Scottish Committee.
- Professor Sir Adrian Webb, Chairman of the Welsh Committee.
- Jodie Berg OBE.
- Professor Alice Brown CBE.
- Professor Andrew Coyle CMG.
- Penny Letts OBE.
- Bronwyn McKenna.
- Dr Jonathan Spencer CB.
- Brian Thompson.
- Sukhvinder Kaur-Stubbs.
- Professor Mary Seneviratne.
- Ann Abraham.

The Scottish Committee

- Richard Henderson CB, Chairman.
- Professor Andrew Coyle CMG.
- Annabel Fowles.
- Michael Menlowe.
- Michael Scanlan.
- Ann Abraham.
- Jim Martin.

The Welsh Committee

- Professor Sir Adrian Webb, Chairman.
- Bob Chapman.
- Gareth Lewis.
- Rhian Williams-Flew.
- Peter Tyndall.
- Ann Abraham.

Governance

- The AJTC is sponsored by the Ministry of Justice.
- The budget allocation for 2010–11 was £1.318 million.

FAMILY JUSTICE COUNCIL

Background

The Family Justice Council (FJC) is an independent non-statutory advisory body established in 2004. Its members have significant knowledge and experience of the family justice system. There are also 39 Local Family Justice Councils which aim to promote an inter-disciplinary approach to family justice locally.

Role

The FJC has the following core roles:

- Promote an inter-disciplinary approach to family justice.
- Provision of inter-disciplinary training.
- Promote good practice.

- Advise on reforms necessary for continuous improvement.

Membership

The FJC is chaired by the President of the Family Division.

The national Council of 30 members meets quarterly and includes expertise from the legal (judges, barristers, solicitors), medical (a paediatrician and a child psychiatrist) and social care (Cafcass representation and a Director of Children's services) worlds.

Executive Committee Members of the FJC

- Lord Justice Thorpe.
- District Judge Nicholas Crichton.
- Annabel Burns.
- Malek Wan Daud.
- Alison Russell QC.
- Bridget Lindley.
- Dr Elizabeth Gillett.
- Nick Goodwin.
- Beverley Sayers.

Its members include:

- a family division high court judge;
- a circuit judge;
- a district judge (county courts);
- a district judge (magistrates courts);
- a lay magistrate;
- a justices clerk;
- two family barristers;
- two family solicitors;
- a family mediator;
- a paediatrician;
- a child mental health specialist;
- a director of local authority children's services;
- an academic; and
- a person appointed for their knowledge of family justice from a parent's point of view.

In addition the Council has ex-officio representatives (who attend meetings where there is business which concerns them) from the following organisations:

- Cafcass;
- CAFCASS CYMRU;
- the Children's Commissioners for England and Wales;
- the Ministry of Justice;
- the Department for Children, Schools and Families (DCSF);
- the Department of Health (DH);
- the Foreign and Commonwealth Office (FCO);
- the Home Office (HO);
- the Welsh Assembly Government (WAG);
- the Legal Services Commission (LSC);
- Her Majesty's Courts & Tribunals Service (HMCTS); and
- the Association of Chief Police Officers (ACPO).

Governance

- The national FJC has a non-paybill budget of £95k. The Local FJC training budget is £145k.
- It is supported by the Judicial Office

Annex B

LETTER FROM JONATHAN DJANOGLY MP, PARLIAMENTARY UNDER-SECRETARY OF STATE,
MINISTRY OF JUSTICE TO DR JEFF KING

REVIEW OF THE MINISTRY OF JUSTICE'S ARM'S LENGTH BODIES

Abolition of the Administrative Justice and Tribunals Council

Thank you and your fellow academics for your letter of 10 October which also went to the Deputy Prime Minister, the Chancellor, and the Lord Chancellor, about the proposal to abolish the Administrative Justice and Tribunals Council (AJTC). I am replying as the Minister responsible for tribunals and administrative justice.

I understand your disappointment about the decision to abolish the AJTC, formally announced on 14 October, but I cannot agree that this decision could represent a serious setback for administrative justice or lead to greater expenditure.

The Government-wide review of public bodies has been underpinned by a principle that it is up to departments to carry out policy and this should not be duplicated elsewhere. In reviewing the Ministry of Justice's public bodies, we looked at the functions those bodies undertook, whether the functions needed to continue, and if so, who should carry them out. As you will have seen, as part of review three tests were applied to each body to assess whether it, as a public body, remains the right delivery mechanism:

- is the body needed in order to perform a technical function;
- does the body need to be politically impartial; and
- is the body needed to act independently in order in order to establish facts?

The AJTC did not meet any of the tests. Administrative Justice policy is the function of the Ministry of Justice, and the oversight and development of administrative justice should stay with the Department.

Regarding your points about tribunals, I am sure that you would agree that the tribunals system has come a very long way in recent years. We now have a well established unified tribunals service supporting the majority of tribunals. The AJTC has played an important role in helping in the creation of the Tribunals Service. Both the MoJ and the judiciary have a much clearer role in both the governance of the system and the development of policy, and stronger governance arrangements mean the review function is no longer needed.

I agree that the distinctive features of tribunals which make them accessible for users are important and I can assure you that the MoJ is committed to ensuring that the specialism and the unique and distinctive features of tribunals will be preserved. The Lord Chancellor, in announcing proposals to bring the tribunals judiciary under the overall leadership of the Lord Chief Justice said in a Written Ministerial Statement on 16 September, that our shared vision is to work towards a unified judiciary encompassing both courts and tribunals. This could be achieved, so far as England and Wales are concerned, by transferring the statutory powers of the Senior President of Tribunals to the Lord Chief Justice, and creating a new office of Head of Tribunals Justice with a statutory obligation to protect and develop the distinct and innovative features of the tribunals.

Turning to your concern that the MoJ is not presently able to perform the same functions as the AJTC, the MoJ has in recent years given priority to reforms to the tribunals system. We are now developing a wider administrative justice capability, bringing administrative justice policy fully into MoJ. We will take the lead on coordinating redress policy across Government, facilitate development of more integrated and consistent dispute resolution systems, and will take a systemic view across the various means of tackling disputes and the roles of the different organisations that provide them (courts, tribunals, alternative dispute resolution, etc). I can assure you I do not intend that the work that the AJTC has done and is doing now should end up being shelved. My officials have committed to regular dialogue with AJTC membership and staff until the time the AJTC is wound up to ensure that its latest thinking on administrative justice issues is taken into account in MoJ's policy work going forward.

In response to your comments about the AJTC providing good value for money, the Government is committed to making substantial reforms to its public bodies, increasing accountability and reducing numbers and cost. I would like to make it clear that where decisions to abolish bodies have been made, they do not reflect on the quality of the work the bodies have done. In relation to the AJTC, I believe that containing administrative justice policy within the Department will provide greater value for money.

December 2011

Supplementary written evidence submitted by AJTC (OAJ 10)

Many thanks for your letter of 22 November. I am writing to follow up briefly on a few points which arose during our oral evidence to your Committee.

AJTC STRATEGIC PLAN 2010–13

As promised I enclose the AJTC's current Strategic Plan, which pre-dates the present government's ALB review. The section on "Measuring our Effectiveness" referred to at the evidence session is on page 17. We gave a short account of our actual output since the plan was published in our original submission to the inquiry. We had envisaged improving our KPI's during 2011 but this work was not taken forward in view of our prospective abolition. We have, however, adopted formal project management techniques for all our recent reports to ensure that we deliver the commitments we make.

IMPACT

You and your colleagues rightly asked questions about our effectiveness in practice. There was not time to give you a comprehensive answer, but I would like to share some further examples with you.

Under the chairmanship of Lord Newton of Braintree, the Council on Tribunals played an absolutely key role in the reform and transformation of the tribunal system, culminating in implementation of the provisions of the Tribunals, Courts and Enforcement Act 2007. Since then the AJTC's contribution has continued—as the only voice of the user—with the development of both the Tribunals Service and HMCTS, including for example:

- participation in the key committees devising and implementing reforms;
- publishing a Guide to Drafting Tribunal Rules;
- participation in the Tribunal Procedure Committee, which plays a significant role in simplifying and streamlining procedural rules;
- membership of the Programme Boards for the Tribunals Service and the Courts & Tribunals Integration Programme;
- membership of the Tribunals Presidents' Group;
- observer status at Tribunals Service Board, able to challenge performance data; and
- attendance at TS Customer Service Board, advising on customer satisfaction measures after the demise of the annual survey.

On the wider stage, AJTC can point to concrete achievements beyond those mentioned in answer to Questions 6, 8 and 16. In the last couple of years, these have included:

- persuading the General Medical Council to develop more robust and independent arrangements for Fitness to Practice cases;
- supporting the Traffic Commissioners and the Parking Adjudicator to assert their independence from, respectively, the Department for Transport and local authorities;
- convening and chairing the Mental Health Advisory Group, which regularly brings together all the main judicial, professional, medical, advocacy and administrative participants in mental health appeals;
- performing a similar role for the War Pensions & Armed Forces Compensation Stakeholder Group;
- (via our Scottish Committee) taking a leading role in the development of the Scottish Tribunal Service;
- (via our Welsh Committee) persuading the First Minister to create an Administrative Justice Unit to start coordinating fragmented activity; and
- hosting a series of conferences and consultative events, enabling administrative justice participants to meet in neutral space.

THE COST OF THE AJTC

I would also like to clarify the likely actual savings from the abolition of the AJTC as far as I am able. Our allocation was £1,318,000 for 2010–11 but this is in practice a theoretical figure as our discretion to spend is severely limited by a number of controls—for example on recruitment. The actual cost of the AJTC in 2010–11 was £1,010,000 and is projected to be £907,000 for 2011–12. We accept the MoJ estimate that the one-off costs of closure will be around £600,000.

We estimate that the actual saving achieved by abolition over the period ending 31 March 2015, based on current annual expenditure of £907,000 and a realistic view of the legislative timetable, is less than £2 million. MoJ has quoted a savings estimate of £4.3m for this same period. We do not understand how this is calculated, and we question the assumed savings of £1.4 million (rounded up for inflation) for each of the next three years. Moreover, if the "dedicated team" devoted to administrative justice is now to be 12 civil servants, the costs savings (if any) are likely to be substantially less than originally claimed.

HM COURTS & TRIBUNALS SERVICE: BENEFITS TO TRIBUNALS

It has been asserted that tribunals will derive considerable benefits from joint administration alongside the courts by HMCTS. We acknowledge that there are some potential benefits, but we believe there are considerable risks too. Under the previous arrangement a dedicated executive agency, the Tribunals Service, was solely responsible for tribunals and the Chief Executive and senior management team were well focussed on the needs of tribunal users. A unified structure is likely to reinforce the Cinderella status of tribunals as the courts have much higher profile and influence. We also believe that merger could lead to a “one size fits all” approach to administration that takes insufficient account of the diversity of jurisdiction types and user needs. We are already seeing evidence for this as criminal court buildings are beginning to be used for tribunal hearings.

Tribunals deal for the most part, although not exclusively, with citizen versus state rather than party and party disputes. They are part of a wider administrative justice system with close links to the process of decision making in Government, local government and other agencies. The remit of the Tribunals Service recognised this and it had begun some valuable early work to explore alternative approaches to dispute resolution and to collaborate with government departments with a view to getting more decisions right first time. We are concerned that this work will not receive the attention it previously did in the Tribunals Service and that the consequential savings will not be achieved.

December 2011

Written evidence submitted by Centre for Justice (OAJ 11)

EXECUTIVE SUMMARY

It is essential that society has effective mechanisms for the oversight of government and for providing the citizen with redress when there is administrative injustice. With or without AJTC, it is CfJ's concern that there is still no adequate forum for securing redress and accountability, and it has set itself the task of researching the issue and providing effective solutions.

INTRODUCTION

Proper redress for users of public services and those dealing with government is a matter of intense concern to all those involved with the public sector.

CfJ's role in the sector has been to focus on a) securing proper redress and access to justice for those who deal with central government, local government and public sector organisations; b) improving dispute resolution and complaint handling within the sector for the benefit of both the organisations involved and those who deal with them; and c) achieving efficiencies and savings to enable the public sector to focus resources on frontline services.

The proposed abolition of the AJTC is a source of some anxiety to all who have an interest in good government, and highlights the question of what mechanisms are available to the individual, the citizen, to challenge the decisions and actions of local and central administration. It is crucial the community has the right mechanisms and that these mechanisms are effective.

Having such mechanisms is fundamental to any free and democratic society. They are essential not only for the individual but for society as a whole. A right is of no value without effective redress. The right can be ignored with impunity and is illusory. Without effective mechanisms to enforce the rights of the citizen, there can be no pretence that we are in any real sense a just society.

What every citizen and society therefore needs is a straightforward, affordable, speedy, independent and effective mechanism or forum which will protect and enforce the rights of the individual.

The existence or right to access such a forum is part of the contract between the state and its members.

It is our concern at CfJ that we lack any adequate forum. This concern needs to be explained before we address the potential roles of AJTC and CfJ in safeguarding redress.

WHAT MECHANISMS ARE AVAILABLE

The present landscape

Present mechanisms for the protection of rights in the public sector consist of the courts, a variety of tribunals and the various ombudsman services (principally the Local Government Ombudsman (LGO), the Parliamentary and Health Service Ombudsman (PHSLO) and the Housing Ombudsman (HO)). The courts are viewed by many as slow, costly, cumbersome and high risk. It can still take years for a matter to work its way through the courts to final appeal. The stress and cost for the individual can be damaging, if not ruinous, and going to court is beyond the means of all but the wealthy, or those rare few who will in future still qualify for legal aid or be able to persuade a lawyer to take on their case on a conditional fee agreement. Lawyers working in the field acknowledge that litigation or process risk is of the order of 30% making the outcome of court proceedings

highly uncertain. Lawyers consistently advise clients not to go to court, if this can be avoided, and the courts themselves are encouraging increasing use of alternative dispute resolution (ADR).

It is CfJ's central conclusion that it is the adversarial nature of court process that creates the problems of cost, delay, complexity and risk. It is the contest and confrontational approach to dispute resolution that is at the heart of the problem, and it is this which necessitates the employment of expensive teams of lawyers and experts to guide and protect the parties through a complex process, which itself adds to the cost and delay.

The numerous tribunal services, while less formal, are equally adversarial. Through their multiplicity and complexity, they represent an even more impenetrable world for the layman, who can negotiate them usually only with the help of a specialist lawyer.

For those who cannot face or cannot afford the court and tribunal services, there is supposedly a remedy to be had from the ombudsmen. The difficulty here is ombudsman services suffer from a number of limitations. They all have different rules, jurisdictions and procedures. What they do though have in common is that they cannot usually be used until all internal complaints procedures within the organisation complained of have been followed through and concluded, resulting in long delays. These delays can seriously exacerbate the problem and cause further injustice.

As just one example of the many limitations that apply to Ombudsmen schemes, the LGO, the most relevant scheme for most people, is precluded by statute from deciding any issue which could be decided by a court or tribunal. It is therefore not an alternative. This severely restricts the role and relevance of the service. There are a whole range of further limitations.

Ombudsmen schemes are commonly viewed with scepticism. Their effectiveness and the likelihood they will deliver a fair and just result is often doubted. (We are carrying out a survey as to public confidence levels).

The figures unfortunately seem to bear out the concerns expressed. Last year the LGO upheld the highest number of complaints, but this was only 26% of cases raised and the PHSO only upheld 1.6% of those raised. We await figures from the HO. The average compensation awarded to those complaining in the last year was £19.57 (LGO), £7.38 (HO) and £54.95 (PHSO).

For every £1 spent on their investigation service the ombudsmen awarded only 11p (LGO), 1.2 p (HO) and 1.4p (PHSO).⁷

It is hard to answer critics who question the justification for this level of cost and the huge disproportion between cost and compensation awarded, and those who question the independence and effectiveness of these schemes.

(These figures compare with the compensation ratio for the service CfJ have been trialling where for every £1 spent, the compensation awarded or agreed averages £10.03. What is particularly interesting is that these figures are generally agreed and the "defendant" has in each case expressed itself satisfied with both the service and compensation agreed. This indicates that the service is delivering the right results but very much more cost efficiently. It is evident that government bodies can have a service which awards compensation they are happy to pay, but at a very much lower cost than they are presently paying).

What is indisputable is that if the courts and ombudsmen schemes are the only options available to a member of the public, there cannot be said to be any real or effective way to challenge government or obtain compensation or redress when an individual or SME dealing with the administration is wronged and suffers injustice. (Mediation as part of the court process makes a useful contribution, but is not taken up due to its own perceived shortcomings, which CfJ addresses in its own dispute resolution model on which we comment below).

It is here we believe that CfJ has a significant role to play, and it is reassuring that there is now a workable alternative on offer.

The abolition of the AJTC

It is important, particularly in the light of the concerns we have highlighted, that there is at least some effective scrutiny of the process of challenge. This is where the AJTC has a function and there can be no question that the oversight of government can be undertaken by government itself as the Ministry of Justice propose.

Our own concern is that the retention of ACTC is nowhere near adequate in itself to deal with the lack of proper scrutiny and redress. It can be seen that even with the AJTC proper redress has not been secured.

What is needed

What is unquestionably needed is an affordable, truly independent, quick and straightforward forum for public and government to sort out their issues.

⁷ Figures given in this paper can be substantiated and sourced on request. Sources have not been included due to the shortage of time as CfJ has been asked to make a late submission.

It was to help fill the void that CfJ was established as a not for profit service and an effective alternative to courts, tribunals and ombudsman schemes.

We have concluded that the key to meeting this need is the removal of the adversarial approach from the handling of problems. It is by taking a non-adversarial approach that the cost, stress, delay and hostility are removed from the resolution of disputes and grievances. It is by treating these as problems to be resolved with the positive assistance of a CfJ style service, rather than as battles to be fought between opposing adversaries, that speedy and constructive solutions can be found, for the benefit of both the individual and the government body concerned.

What is needed is a supportive but inquisitorial adjudication model as provided by CfJ. This gives a decision through adjudication when required, but helps the parties to agree a solution through mediation where possible. Importantly, where mediation is unsuccessful, or not attractive to the parties, the CfJ service carries out a thorough investigation of the issues and makes a binding award. It does this without hostility and without the need for complex process, protracted hearings or the need for teams of lawyers to represent the parties. It is a fully non-adversarial model. It has worked well in the initial stages of simulated and actual trials and is being well received.

This paper is not intended to promote or set out the CfJ service and its benefits in detail. What we want to show is that there is a demand for an effective model which can meet the needs of the public and government; and that it is possible to find such a model, one which answers the call for greater accountability and redress set out in the recent Open Public Services White Paper, to which CfJ responded in October, and which saves money for the public sector. CfJ has demonstrated the model and established that this provides the public with redress and the public sector with reduced settlements and substantial savings in costs.

COST SAVINGS AND EFFICIENCIES

On this last point, our research at CfJ has shown that, from full blown disputes, fought through courts and tribunals, down to the low level problems that cause ongoing friction and dissension through endless fruitless meetings, correspondence, telephone calls, and which continue to fester unresolved sometimes for many years, public sector conflicts consume enormous amounts of staff time and public resource.

These disputes draw in councillors, MPs, media and senior staff; often escalating through various levels of complaints procedure to sometimes repeated references to the ombudsmen, and then to the courts. These disputes and grievances, resolved or not, are enormously damaging to relationships, health, morale and reputations, causing loss of productivity, absenteeism and untold further fallout within the organisations concerned not to mention for the complainants and their communities.

It is estimated that anything up to 10% of public resources can be consumed in low to high level conflicts and disputes. This is in addition to the unnecessary legal costs of pursuing and defending claims through the courts. Even in the private sector top executives have been shown by research to spend 20% of their time in dispute resolution and that a dispute of no more than £1million in value will, if contested in court, typically take up over three years in total management time⁸. The resources diverted from front line services in this way are enormous. This waste is avoidable.

There are clear and substantial efficiencies and savings that can be achieved through proper use of an effective dispute resolution service.

The CfJ approach is designed to provide these efficiencies, and ensure resources and funding are directed where they are needed.

We understand that studies have further shown that with checks and balances through independent scrutiny and through customer/user challenge and feedback, services improve and become more efficient, staff morale and motivation are improved and all parts of the organisation flourish.

It is of interest that the level of settlement can also be reduced using the model we advocate. Where the parties are put into a more constructive and less confrontational environment, they are usually willing to settle on more reasonable terms.

CONCLUSION

Through this modern and more enlightened approach to dispute resolution the government can not only improve redress and access to justice, but save money and safeguard and improve services. It is a clear win-win situation and one that needs to be pursued urgently in these difficult times.

CfJ are opening up discussions with central government, at present through the Ministry of Justice and Cabinet Office, to explore the benefits of the CfJ approach.

We would expect government to welcome the opportunity offered, though we have had no immediate response to date. We hope in early 2012 to have meetings with ministers to explore and progress the introduction of the service and would welcome the assistance of the Committee to facilitate discussions.

⁸ See note 1 above on sources.

NOTE

Centre for Justice is a non-governmental organisation set up by leading lawyers to meet the need for the public, business and government to resolve their disputes quickly, reliably and cost efficiently. Working with representatives of the judiciary, government, commerce, industry and the third sector, it has developed an entirely novel approach to dispute resolution, which dramatically reduces the stress, cost and delay involved. It puts the needs and concerns of those in dispute firmly at the centre of the process.

The Centre resolves all disputes referred a very much lower cost and in very much less time than by action through the courts or statutory tribunals.

The Centre's staff and directors combine experience from commerce, industry, government and the law.

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