House of Commons
Justice Committee

Scrubtiny of the draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013

Eighth Report of Session 2012–13
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Volume I: Report, together with formal minutes

Written evidence is contained in Volume II, available on the Committee website at www.parliament.uk/justicecttee

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The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor’s Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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The following Members were also members of the Committee during the Parliament:

Mr Robert Buckland (Conservative, South Swindon); Christopher Evans (Labour/Co-operative, Islwyn); Mrs Helen Grant (Conservative, Maidstone and The Weald); Ben Gummer (Conservative, Ipswich); Mrs Siân C James (Labour, Swansea East); Jessica Lee (Conservative, Erewash); Robert Neill (Conservative, Bromley and Chislehurst); Claire Perry (Conservative, Devizes); Mrs Linda Riordan (Labour/Co-operative, Halifax); Anna Soubry (Conservative, Broxtowe); Elizabeth Truss (Conservative, South West Norfolk) and Karl Turner (Labour, Kingston upon Hull East).

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/justicecttee. A list of Reports of the Committee in the present Parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Nick Walker (Clerk), Sarah Petit (Second Clerk), Gemma Buckland (Senior Committee Specialist), Helen Kinghorn (Committee Legal Specialist), Ana Ferreira (Senior Committee Assistant), Miguel Boo Fraga (Committee Assistant), Holly Knowles (Committee Support Assistant), George Margereson (Sandwich student), and Nick Davies (Committee Media Officer).

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Summary

In our Fifth Report of this Session we recommended an extension of the scrutiny period applying to the draft order brought forward by the Government under the Public Bodies Act 2011 to abolish the Administrative Justice and Tribunals Council (AJTC). During that extended period we sought and received written evidence on the draft order from a number of interested parties, including the Ministry of Justice and the AJTC itself. We conclude that there are certain functions of the AJTC which can be transferred to the Ministry of Justice without significant detriment to the administrative justice and tribunals system, but we do not believe that the abolition of the AJTC satisfies the statutory tests in respect of efficiency and effectiveness. We therefore recommend that the Government reconsiders its decision to abolish the Council. We consider, however, that it could make sense for it to have a more restricted, refocused role, concentrating on the accessibility of the administrative justice system following the removal of many areas from the scope of publicly funded legal aid and advice, and the need to reduce dependency on systems of redress by promoting better decision making. In considering how to proceed, Ministers are required to have regard to the recommendations which we make in this Report.
1 Introduction

Our inquiry

1. The Government announced its intention to abolish the Administrative Justice and Tribunals Council (AJTC) in October 2010. As a result of serious concerns expressed during the Ministry of Justice’s 2011 consultation on the future of its public bodies1 and by the Public Administration Committee last year,2 on 22 January we recommended that the procedure in section 11 (6) to (9) of the Public Bodies Act 2011 should apply to the draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013, which was laid on 18 December 2012 and would abolish the Council.3 This extended the period which must elapse before the draft Order may be approved by either House of Parliament to 60 days.4 This Report outlines briefly our findings, conclusions and recommendations, based on the further scrutiny we have undertaken during this period. Under the terms of the Public Bodies Act 2011, the Government must “have regard” to the recommendations in our Report.

2. We aimed not to duplicate the parliamentary scrutiny work and public consultation already undertaken, and therefore restricted our call for evidence to the extent to which the Government had addressed the concerns raised through these processes in the explanatory document to the draft Order, the impact assessment and the Administrative Justice and Tribunals Strategic Work Programme, also published in December 2012.5 In particular, we sought views as to whether, following abolition of the AJTC:

- The proposed arrangements for independent overview of the administrative justice and tribunals system, including the role and membership of the Administrative Justice Advisory Group, are satisfactory;

- Sufficient resources and expertise will be available within the Ministry of Justice to carry out continuing functions undertaken hitherto by the AJTC; and

- The Government’s estimate of cost savings arising from closing the AJTC is likely to be accurate.

We received 16 submissions in response. Two were from the Ministry of Justice, four from the AJTC and its Committees, five from organisations forming part of the administrative justice and tribunals system, two from legal academics, one from the PCS union which

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1 The responses are summarised in Ministry of Justice, Response to consultation on reforms proposed in the Public Bodies Bill: Reforming the public bodies landscape of the Ministry of Justice, Response to Consultation CP(R) 12/2011, 15 December 2011. We have also been provided with the full responses by the Ministry.


4 The House of Lords Secondary Legislation Committee also reported on the draft Order on 31 January 2013. It criticised the Government for pre-judging the outcome of its initial consultation process and failing to provide robust documentation with the draft Order to make the case for abolition, and concluded that it would have recommended the enhanced scrutiny period if we had not already done so.

represents staff in the AJTC, one from the MIND mental health charity and one from the Law Society of Scotland. We are grateful to all those who have contributed to our inquiry.

The Administrative Justice and Tribunals Council

3. The administrative justice system is generally understood to include the mechanisms by which individuals can challenge, question and seek to change decisions which central and local public bodies have made about them. It includes complaint schemes operated by Government departments and other public bodies, ombudsmen, tribunals and the administrative court. It is estimated that about a million cases a year go through the system (compared to around 65,000 civil and 200,000 criminal justice cases).6

4. The AJTC is an advisory non-departmental public body of the Ministry of Justice with a statutory role 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 [Ministers]; and

e) make proposals for research into the system.

The AJTC provides advice on changes to legislation, practice and procedure which will improve the workings of the administrative justice system; attend proceedings of tribunals (including deliberations) as an observer; makes recommendations on the priorities for Ministry of Justice and other research projects, as well as disseminating, and lending authority to, any research findings; reviews the relationships between the various components of the administrative justice system (such as ombudsmen, tribunals and the courts); give evidence before Parliamentary Select Committees; publish a statutory Annual Report and other guidance on relevant matters; holds an annual conference for those with an interest in administrative justice, and topical workshop events when the need arises; and produces a quarterly electronic newsletter.7

5. Members meet on a monthly basis. The AJTC is chaired by the former Information Commissioner Richard Thomas. By statute it has not more than fifteen nor fewer than ten appointed members, of which two or three are appointed by the Scottish Ministers with the concurrence of the Lord Chancellor and the Welsh Ministers and one or two by the Welsh Ministers with the concurrence of the Lord Chancellor and the Scottish Ministers. The remaining members are appointed by the Lord Chancellor with the concurrence of the Scottish and Welsh Ministers. Members have a professional background in law, regulation and/or public sector management and its current membership includes the Parliamentary and Health Service Ombudsman, a former Mental Health Act Commissioner, the Chair of the Office for Legal Complaints and an Independent Complaints Reviewer. There is also a

6 HC (2010–12) 1621
Scottish Committee and a Welsh Committee of the Council. The AJTC’s remit does not extend to Northern Ireland.
2 Oversight of the administrative justice and tribunals system

6. A Minister may only make an order under the Public Bodies Act if it serves the purpose of improving the exercise of public functions, having regard to (a) efficiency, (b) effectiveness, (c) economy, and (d) securing appropriate accountability to Ministers. In this and the following chapter, we discuss the arguments advanced in the explanatory document to the draft Order in relation to “efficiency” and “effectiveness”, and we examine those relating to “economy” in chapter four. The Ministry of Justice considers that:

**Efficiency:** The decision to abolish the AJTC is consistent with the elimination of duplication of functions. The department is capable of providing Ministers with balanced, objective, impartial and expert advice on administrative justice policy. The AJTC’s tribunal oversight functions are no longer required due to the establishment of a unified tribunal system within Her Majesty’s Courts and Tribunals Service (HMCTS). The needs of users can be monitored through liaison with jurisdictional user groups and other sources of user information. The Advisory Group that has been established will provide an expert and critical forum to examine the issues raised and explore options to address them.

**Effectiveness:** The Ministry can provide effective oversight of the administrative justice system as a whole, drawing upon independent advice where appropriate. The Ministry of Justice will promote effectiveness by strengthening governance arrangements with other Government departments, administrations and other actors in the administrative justice and tribunals system. It is more effective for the oversight of tribunals to be exercised through the robust governance arrangements that exist within HMCTS.

7. The Public Administration Committee, which inquired into the proposal to abolish the AJTC in 2011, concluded in February 2012 that:

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. Accordingly, we asked for views as to whether the Ministry of Justice had provided satisfactory reassurances about the arrangements for overview of the administrative justice

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8 Public Bodies Act 2011, section 8 (1)
9 See Annex B of the Ministry of Justice’s submission [Ev w12–21] for a list of how each of the functions will be covered.
10 Explanatory Document to the draft Order, para 7.16
11 HC (2010–12) 1621, para 45
and tribunals system. Respondents did not consider that the Ministry itself can provide an independent overview. For example, the Scottish Committee of the AJTC noted that, as an executive agency, HMCTS is “as much part of government as the Ministry of Justice itself”. The AJTC added, in relation to the role to be played by the policy team, that:

Officials are not able constitutionally to speak out freely. The Ministry of Justice’s administrative justice team is unlikely to take on concerns which may question or challenge government policy, or tackle the merits of controversial proposals such as those concerning legal aid changes, tribunal fees or limitations of access to judicial review [...] The Ministry of Justice would not (and should not) have the AJTC’s statutory visiting rights.

The Social Fund Commissioner stated that:

The oversight of the complex administrative justice landscape is quite different to that of policy development. Here it is necessary to demonstrate independence, both in reality and perception.

8. Other respondents described how independent and expert overview of the system has added value. MIND said that it welcomed the publication by the AJTC together with the Care Quality Commission of a pilot study of appellants’ experiences of appeals against detention under the Mental Health Act, which “has resulted in some helpful adjustments including provision of a patient leaflet to explain the pre-tribunal medical examination and customer feedback monitoring.” Dr Jeff King of University College London, who submitted evidence on behalf of himself and a number of other legal academics, gave two examples of where the Government has benefited from the AJTC’s “informed, independent commentary;” its advice on fitness to practice appeals when the Government decided not to proceed with an Office of Health Professions Adjudicator; and its advice on changing the powers of School Exclusion Appeal Panels to School Exclusion Review Panels in the Education Act 2011. We are also aware that the Joint Committee on Human Rights made extensive use of the AJTC’s submission about proposed changes to the school exclusion appeals system in its Report on the Education Bill. More recently, the AJTC has written to the Secretary of State for Education to raise concerns about admission appeal processes for schools outside of local authority control and recommend the establishment of a uniform system of appeals applying to all schools. We express no view as to the merits of this proposal but we note that a large number of people are affected by these

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12 Ev w2
13 Ev w36
14 Ev w51
15 Ev w61
16 Mr Imran Tehal, St. John’s College, Oxford, Varda Bondy, on behalf of the Public Law Project, Professor Trevor Buck, De Montfort University, Prof Simon Halliday, University of York, Dr Richard Kirkham, University of Sheffield, Professor Tom Mullen, University of Glasgow and Professor Maurice Sunkin, University of Essex.
17 Ev w58
18 Joint Committee on Human Rights, Thirteenth Report of Session 2010–12, Legislative Scrutiny: Education Bill; and other Bills, HL Paper 154/HC 1140, 13 June 2011
19 The Committee has been provided with a copy of the letter, dated 22 February 2013, which was reported by the BBC on 5 March, http://www.bbc.co.uk/news/education-21665423
issues, given that there are over 80,000 such appeals each year, with no other obvious body to represent their experiences.

9. One concern expressed in the consultation related to the potential loss of expert advice and user input on administrative justice. In November 2011, the Government revealed its intention to set up an Administrative Justice Advisory Group to fulfil this role. The Public Administration Committee recommended that the Government “provide further information on its proposals for the membership and operation of this group of experts and key stakeholders”.20 In the Administrative Justice and Tribunals Strategic Work Programme, the Government advised the Group had met for the first time in May 2012 and it was currently finalising membership and terms of reference. It provided this information to our inquiry. The Group includes staff from Ministry of Justice and HMCTS, the Ombudsman Association, the Independent Complaints Reviewer and 11 generalist and specialist advice groups such as the Citizens Advice Bureau and the Immigration Law Practitioners’ Association. It does not as yet include any representation of Scottish or Welsh interests, although the Government has committed to adding members from these jurisdictions.21

10. In general, respondents lacked confidence in the Administrative Justice Advisory Group. Dr Jeff King described it as a “poorly planned afterthought”.22 The AJTC was concerned about the Group’s ability to function effectively, considering “it has no status, standing or budget of its own; it lacks a chairman and secretariat; it is dependent upon Ministry of Justice policy staff” and only meets twice a year.23 The Scottish Committee of the AJTC said there was “little to suggest that the Ministry of Justice have yet developed any real idea of what AJAG might do”.24 The Social Fund Commissioner accepted the group could provide a user perspective in policy development but posited “it may be a challenge too far to expect them to exercise effective, independent oversight of both policy development and practice across the administrative justice field.”25

11. It was helpful to hear from an advisory group member, MIND, about their experiences thus far. The organisation wrote that:

   We consider the Advisory Group a helpful forum for exchange of views and for learning of Ministry of Justice’s initiatives. However, the Group is dependent for its existence on the Ministry of Justice. We do not know whether it has a separate budget or whether it could provide reports or carry out public consultation. Therefore we do not consider that the group provides a replacement for the AJTC.26

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20 HC (2010–12) 1621, para 28
21 Ev w65 [Ministry of Justice]
22 Ev w56
23 Ev w36
24 Ev w3
25 Ev w51
26 Ev w62
The Ministry of Justice clarified that:

It is fair to say that the Group is not yet fully operational ... Whilst the AJTC has continued to carry out its functions, the Ministry of Justice has been mindful not to draw too heavily upon the time of those who have volunteered to sit on the Group, many of whom will also have connections with the AJTC.27

12. We looked briefly at comparable oversight arrangements for other parts of the justice system. The Civil Justice Council is an independent advisory body funded by the Ministry of Justice but sponsored by the Judicial Office since 2010. Established under section 6 of the Civil Procedure Act 1997, it has a similar statutory role to that of the AJTC in relation to civil justice, is chaired by the Master of the Rolls and includes membership from the courts, the legal profession, the lay advice sector, the civil service and others.28 The Family Justice Council is an independent, non-statutory, advisory body established in 2003 in order to monitor how effectively the system delivers the service the Government and the public need. It is chaired by the President of the Family Division, and includes representation from the courts, the legal profession, civil servants, health and social care practitioners and children’s groups. It is also funded by the Ministry of Justice but sponsored by the Judicial Office, and will continue to operate independently of the new Family Justice Board.29 Both Councils have their own budgets. The Government has recently established a Criminal Justice Board, but this is not designed to be independent and is therefore not comparable.

13. There can be said to be a stronger argument for independent oversight of the administrative justice system than other parts of the justice system, given that “it involves the decision-making of government agencies and any subsequent disputes between citizen and government, such that government overview cannot be, or be seen to be, impartial.”30

27 Ev w65
30 Ev w36 [AJTC]
3 Ability of the Ministry of Justice to carry out AJTC functions

14. We asked in our call for evidence whether sufficient resources and expertise are available within the Ministry of Justice to carry out continuing functions undertaken hitherto by the AJTC. The AJTC noted that resources within the Ministry of Justice dedicated to administrative justice are “very limited” compared to those for criminal and civil justice, and “reflect the relative priority the subject area is given”. The Ombudsman Association feared that, “without an independent ‘champion’ such as the AJTC”, administrative justice could “suffer as the ‘poor relation’ of justice, second to the criminal and civil justice systems.” The Public Administration Committee recommended that the Ministry make available alongside the draft Order “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.” This was not initially provided and we wrote on 19 February to ask the Minister to provide this information.

15. The Minister replied with details of the 28 staff employed in the Administrative Justice, Court and Tribunal Fees and Coroners Policy Team, although she gave the caveat that this information “does not provide the Committee with a meaningful picture of how resources will be deployed to deliver priorities nor how that compares to the current make-up of the AJTC”. This is because the Justice Policy Group has been operating on a Flexible Resource Management basis since 2010, which allows the policy function to be more responsive. The Minister gave a rough estimate that upwards of 40% of the time of the whole team would be spent on administrative justice and related policy issues.

16. Some respondents also considered that the Ministry of Justice lacked the requisite pool of expertise, although the Minister noted that the longest-serving member of the Administrative Justice, Court and Tribunal Fees and Coroners Policy Team started working on relevant issues in 1994 and other members of the team “have varied experience both in the administrative justice field [and] other parts of the justice system” and the team “draws upon the advice of colleagues in operational or legal roles with many years of experience in courts and tribunals”. Dr Jeff King noted considered that the MoJ’s view of administrative justice as a “non-specialist area of policy” was “misguided.” The AJTC argued that:

Generalist policy officials cannot be expected to have the expertise, experience, personal and organisational contacts or corporate memory of Council and secretariat
members who have spent a significant part of their working lives within or alongside the administrative justice system.\textsuperscript{37}

17. A further argument advanced was that the arrangements do not adequately cater for Scotland or Wales. The administrative justice system in Scotland and Wales comprises both the devolved sector, covering matters within the competence of the devolved administrations (for example, decisions relating to mental health and planning) and the reserved sector, covering matters retained by the UK Government (such as social security and immigration). Respondents raised concern that, in the first instance, the new arrangements fall short in relation to UK-wide responsibilities in Scotland and Wales. The Ministry of Justice is supporting the Scottish and Welsh Governments to set up interim independent advisory committees to have oversight of administrative justice in these jurisdictions. However, the Scottish Committee of the AJTC, which currently has a statutory obligation to keep the whole of the administrative justice system in Scotland under review, argued that the Ministry has failed to present “meaningful proposals as to how it proposes to provide such oversight in Scotland in relation to matters which will continue within its responsibility”.\textsuperscript{38} The Law Society of Scotland shared this concern.\textsuperscript{39} Secondly, the AJTC regularly examines issues of common concern to the administrative justice systems of Wales, England and Scotland together and the Welsh Committee of the AJTC suggested that abolition would remove a “valuable source of expertise on cross-border issues”.\textsuperscript{40}

18. A number of respondents questioned the ability of the Ministry of Justice to oversee the full gamut of administrative justice processes, given that they straddle a number of departments. The Ombudsman Association stated that:

\begin{quote}
The positioning of administrative justice oversight within the Ministry of Justice would give the incorrect perception [...] that administrative justice is the exclusive concern of the Ministry of Justice. That is not the case, especially where ombudsmen are concerned.\textsuperscript{41}
\end{quote}

The House of Lords Secondary Legislation Committee concluded that:

\begin{quote}
The House may wish to press the Minister to confirm that no part of the administrative justice system currently included under the AJTC’s overview remit to make the whole system more accessible, fair and efficient, will be left out under the new arrangements, because that is what is required to ensure the two safeguard tests are fully met. \textbf{We recommend, as a minimum, that the Minister publishes a mapping exercise illustrating all the bodies currently under the aegis of the AJTC and showing their status in relation to the unified Tribunal System, the Advisory}
\end{quote}

\textsuperscript{37} Ev w37
\textsuperscript{38} Ev w4
\textsuperscript{39} Ev w62–3
\textsuperscript{40} Ev w50
\textsuperscript{41} Ev w53
Scrutiny of the draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013

Group and the Ministry of Justice now and at 31 March 2013, the date proposed for the abolition of the AJTC.  

19. The Ministry of Justice provided us with such a map. The Ministry intends a “light touch” oversight role of those panels and tribunals which are outside of HMCTS, for example the School Admission Independent Appeal Panels and Exclusion Independent Review Panels, “liaising with the relevant administrators and ‘owning’ Departments”. The National Association of Appeal Clerks considered it unlikely that the Ministry will have capacity to perform the oversight functions currently undertaken by the AJTC, even if it would be appropriate for it to do so. Moreover, Professor Colin Reid argued that:

The AJTC is the only body that can link together departmental practice, the tribunals, the courts, ombudsmen and less formal complaints mechanisms, the only body with a remit that encompasses an overview of all stages of the ways in which the administration at all levels deals with individual members of the public who are unhappy with their treatment.

20. The Ministry argues that the AJTC is redundant in part because many tribunals have been brought into HMCTS, whose governance arrangements ensure that they are more coordinated and consistent:

The independence of the tribunals system administered by HMCTS ensures that tribunal members and their administrative support systems are sufficiently removed from decision makers to diminish the case for a standing body to oversee tribunals.

However, according to Professor Reid:

[...] the very strength of the reformed tribunals system weakens the attention on the other, less structural, aspects of administrative justice. It is at the other stages of the administrative process that many more cases are resolved. This is where there is a great opportunity for the AJTC to make a major contribution.

The Parliamentary and Health Service Ombudsman argued that the Administrative Justice and Tribunals Strategic Work Programme is too focused on the tribunal system:

[...] the only reference to working with Ombudsmen, for example, is in the context of identifying and addressing performance issues in the administrative justice system and helping spread good practice. This is at a time when increasing use is being made of the ombudsman system; the tribunal redress route for Special Educational Needs will be replaced with access to the ombudsmen, and the Ministry’s own impact

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43 Ev w29
44 Ev w7–8
45 Ev w5–6
46 Ministry of Justice, Administrative Justice and Tribunals: A Strategic Work Programme, December 2012, paragraph 35
47 Ev w5
analysis on the removal of Legal Aid encouraged access to ombudsmen as an alternative. 48
4 Savings arising from abolition

21. Finally, we asked for views as to whether the Government’s estimate of cost savings arising from closing the AJTC is likely to be accurate. The Public Administration Committee was critical of the original estimate that accompanied the 2011 Act, as it assumed that the AJTC would not be required to reduce to reduce its operating costs like other public bodies and the Committee suspected the Ministry of Justice underestimated the costs of running the same functions in-house.49

22. The Government provided revised cost estimates in the explanatory document which are as follows, based on an anticipated closure date of 31 March 2013:

- The AJTC is currently operating at a cost of around £0.7m pa.
- Gross cumulative savings of £1.4m are estimated from closure across the remainder of the Spending Review period (2013/14–14/15).
- Costs associated with closure are estimated to be £0.3m for possible redundancies at the AJTC and £0.15m in each of 2013/14 and 2014/15 for reimbursements to the Scottish and Welsh governments for the creation of interim non-statutory bodies to replace the AJTC in Scotland and Wales. Total costs for the rest of the Spending Review period are therefore £0.6m.
- **Net cumulative savings from closure over the remaining Spending Review period are therefore now estimated to be £0.8m.**
- Ministry of Justice would continue to make savings beyond the Spending Review period from no longer funding the AJTC.50

23. A number of submissions mentioned the fact that the Government has revised its estimate down on two occasions, but we accept the Ministry’s argument that this is at least in part because abolition has been delayed and the estimate relates to the current Spending Review period. The estimate assumes that there will be no additional staffing costs at the Ministry of Justice. We described in chapter 3 the reasons the Ministry gives for this. In response, the AJTC said:

> We understand that Ministry of Justice Policy Group staff are a flexible resource but we regard it as unrealistic not to include any part of the Ministry of Justice administrative justice team salary costs in the overall estimate. If such costs were included, there would almost certainly be a net cost as a result of abolition, rather than any savings.51

24. A further relevant point was made that the savings estimate does not take into account the role the AJTC plays in driving down costs. Dr Jeff King described the AJTC as “excellent value for money”. It goes on to state that:

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49 HC (2010–12) 1621, para 51
50 Explanatory document to the draft Order
51 Ev w38
The MoJ has no reliable way of estimating costs precisely because it has no real understanding of what is needed to replace the AJTC. The fundamental measure for ‘savings’ is not and cannot be reduced expenditure alone. The true question about efficiency in public service delivery is value for money, and thus whether the replacement service can perform the same (or reasonably similar) functions as effectively but with less expenditure. Since the current plans are both too vague and on their face implausible as a replacement for the AJTC’s functions, the arithmetic is in principle simply impossible to carry out.\(^{52}\)

In a similar vein, Professor Colin Reid argued that:

The best way of saving the public money spent in relation to administrative justice is to reduce the number of cases that have to be dealt with through internal complaint, grievance and redress procedures, tribunals and the courts. This reduction can be achieved:

- by improving initial decision-making,
- by better communication with individuals before and during procedures so that they know what to expect and what is possible and so that they do not feel aggrieved even if they do not receive the desired outcome,
- by providing quick, cheap and simple review and redress where this is appropriate, and
- by considering how the various avenues of redress can best work together.

This is a task which involves functions spread across many government departments and bodies and which requires the overview which can be achieved only by a body that is one step removed from the "front-line" and able to look at procedures and practice across many fields.\(^{53}\)
5 Conclusions and recommendations

25. We accept that there are certain functions of the AJTC which can be transferred to the Ministry of Justice without significant detriment to the administrative justice and tribunals system. For example, policy development is properly a function of the Ministry of Justice and it is also the case that those tribunals which have been brought into HMCTS are now subject to more robust governance processes. However, we do not believe that the abolition of the AJTC satisfies the statutory tests in respect of efficiency and effectiveness. The costs of the council are relatively small, and greater accountability to ministers is not appropriate in this instance because of the extent to which the administrative justice and tribunal system deals with disputes between the citizen and the executive. We have a number of further concerns:

- We consider that the extent to which the Ministry of Justice can oversee those panels, tribunals and other complaints mechanisms which fall outside of its departmental remit is highly questionable, particularly given the level of resource which will be dedicated to this area;

- We have reservations about the extent to which the Ministry of Justice can and will monitor administrative justice in reserved sectors in Scotland and Wales; and

- We doubt that the Administrative Justice Advisory Group as currently constituted can match the level of expert advice and user input currently provided by the AJTC or carry out the same volume of activity in those areas where we consider external contribution to be worthwhile.

26. The Government continues to fund a Civil Justice Council and a Family Justice Council and we do not understand the rationale for singling out the AJTC for abolition, given that the number of cases dealt with by the administrative justice system dwarfs that of these other areas of law. We believe that the AJTC, which costs only £700,000 to run, adds sufficient value to justify its continuing existence and we therefore recommend that the Government reconsiders its decision to abolish the Council. We consider, however, that it could make sense for it to have a more restricted, refocused role, concentrating on the accessibility of the administrative justice system following the removal of many areas from the scope of publicly funded legal aid and advice, and the need to reduce dependency on systems of redress by promoting better decision making.
Formal Minutes

Tuesday 12 March 2013

Members present:

Sir Alan Beith, in the Chair

Steve Brine
Rehman Chishti
Jeremy Corbyn
Nick de Bois
Gareth Johnson

Mr Elfyn Llwyd
Andy McDonald
Yasmin Qureshi
Graham Stringer
Mike Weatherley

Draft Report (Scrutiny of the draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 26 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Eighth 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 (in addition to that ordered to be reported for publishing on 5 March 2013).

[Adjourned till Tuesday 19 March at 9.15 am]
## List of written evidence

(published in Volume II on the Committee’s website www.parliament.uk/justicecttee)

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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.

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Second Report Appointment of the Chair of the Judicial Appointments Commission HC 770
Third Report Government's proposed reform of legal aid HC 681–I (Cm 8111)
Fourth Report Appointment of the Prisons and Probation Ombudsman for England and Wales HC 1022
Fifth Report Appointment of HM Chief Inspector of Probation HC 1021
Sixth Report Operation of the Family Courts HC 518–I (Cm 8189)
Seventh Report Draft sentencing guidelines: drugs and burglary HC 1211
Eighth Report The role of the Probation Service HC 519–I (Cm 8176)
Ninth Report Referral fees and the theft of personal data: evidence from the Information Commissioner HC 1473(Cm 8240)
Tenth Report The proposed abolition of the Youth Justice Board HC 1547(Cm 8257)
Eleventh Report Joint Enterprise HC 1597 (HC 1901)
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First Report Post-legislative scrutiny of the Freedom of Information Act 2000 HC 96–I (Cm 8505)
Second Report The budget and structure of the Ministry of Justice HC 97–I (Cm 8433)
Third Report The Committee's opinion on the European Union Data Protection framework proposals HC 572 (Cm 8530)
Fourth Report Pre-legislative scrutiny of the Children and Families Bill HC 739 (Cm 8540)
Fifth Report Draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013 HC 927
Sixth Report Interpreting and translation services and the Applied Language Solutions contract HC 645
Seventh Report Youth Justice HC 339