<table>
<thead>
<tr>
<th>Evidence ref</th>
<th>Witnesses and relevant memoranda</th>
</tr>
</thead>
<tbody>
<tr>
<td>AJTC 01</td>
<td>Scottish Committee of the Administrative Justice and Tribunals Council</td>
</tr>
<tr>
<td>AJTC 02</td>
<td>Professor Colin Reid</td>
</tr>
<tr>
<td>AJTC 03</td>
<td>NASAC</td>
</tr>
<tr>
<td>AJTC 04</td>
<td>Ministry of Justice</td>
</tr>
<tr>
<td>AJTC 05</td>
<td>AJTC</td>
</tr>
<tr>
<td>AJTC 06</td>
<td>Welsh Committee of the Administrative Justice and Tribunals Council (WCAJTC)</td>
</tr>
<tr>
<td>AJTC 07</td>
<td>Karamjit Singh CBE, Social Fund Commissioner</td>
</tr>
<tr>
<td>AJTC 08</td>
<td>PCS</td>
</tr>
<tr>
<td>AJTC 09</td>
<td>Ombudsman Association</td>
</tr>
<tr>
<td>AJTC 10</td>
<td>Parliamentary and Health Service Ombudsman</td>
</tr>
<tr>
<td>AJTC 11</td>
<td>Local Government Ombudsman</td>
</tr>
<tr>
<td>AJTC 12</td>
<td>Dr Jeff King, Imran Tehal, Varda Bondy, Prof Trevor Buck, Prof Simon Halliday, Dr Richard Kirkham, Prof Tom Mullen, Prof Maurice Sunkin</td>
</tr>
<tr>
<td>AJTC 13</td>
<td>Mind</td>
</tr>
</tbody>
</table>
The abolition of the Administrative Justice and Tribunals Council

Introduction

This is the response of the Scottish Committee of the Administrative Justice and Tribunals Council to the Justice Committee’s call for evidence on the abolition of the Administrative Justice and Tribunals Council (AJTC). This submission attempts to address the three points which the Justice Committee raised in its call for evidence on 30 January in connection with its consideration of the draft Order for abolition of the AJTC.

The three points, which will be addressed in turn, are
Whether 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;
Whether sufficient resources and expertise will be available within the Ministry of Justice to carry out continuing functions undertaken hitherto by the AJTC; and
Whether the Government’s estimate of cost savings arising from closing the AJTC is likely to be accurate.

The Scottish context

Before offering comment on the points on which the Justice Committee has called for evidence, the Scottish Committee considers it appropriate to point out that the Scottish legal system is separate and distinct from that of England and Wales. That factor sets the context in which consideration of the MoJ’s proposals must be viewed.

The UK administrative justice system which operates in Scotland and in the other jurisdictions within the UK is derived principally from an overlay of statutory law which creates the structure within which that system is relevant. Some of that overlay operates at a UK level to create rights for citizens which are substantially similar across the United Kingdom, while on the other hand some operates at a regional level covering only Scotland or England or Wales.

The administrative justice system in Scotland comprises two separate but linked sectors. The devolved sector covers those matters which are within the devolved competence of the Scottish Parliament and Government; those matters would include, for example, Mental Health, Valuation, Education, Planning and Housing, amongst other matters. The reserved sector covers matters retained by the United Kingdom Parliament and Government, and those matters would include, for example, Social Security, Taxation and Immigration amongst other matters.

All of those matters affect the daily lives of ordinary people in Scotland. In 2010/11, some 52,800 Social Security and Child Support appeals were received by the reserved First Tier Tribunal in Scotland while in the same period there were 3,707 applications received by the devolved Mental Health Tribunals.

Additionally, for the purposes of the debate about oversight of tribunals, it is necessary to note that certain tribunals deal with disputes between citizens and do not necessarily address issues of an administrative or executive nature. Those would include the Employment Tribunals for instance, and for completeness it should be noted that in 2010/11 the Employment Tribunals in Scotland received 17,600 applications.

Tribunals in this category in Scotland operate of course as part of the Scottish Legal System, although not as part of the administrative justice system.

---

1 The Scottish Committee has a statutory obligation to keep the whole of the administrative justice system in Scotland under review, and to provide advice to Scottish Ministers on its improvement. To enable us to better understand the issues requiring improvement we commissioned three pieces of research described below during the 2010/2011 reporting year. The full reports of all our commissioned research are available to view on the AJTC website at http://www.justice.gov.uk/ajtc/news.htm.

2 Tribunals Courts and Enforcement Act 2007 Sch 7 - “the administrative justice system” means 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.

3 Source – Scottish Committee AJTC Annual Report 2010/11
The administrative justice and tribunals system in Scotland involves therefore, a complicated structure occasioned by the interplay between devolved and reserved, and that presents issues for government at both devolved and reserved levels. At the very least the management of the administrative justice system in Scotland requires co-operation between the UK Government, ordinarily in the guise of the MoJ, and the Scottish Government.

Those issues are more complex than the issues which arise for the administrative justice system in England in which there is no such differentiation between reserved and devolved. The UK Parliament legislates directly for both UK and England only matters, and in England the MoJ presides over a structure which encompasses England only and UK structures. HMCTS covers both England only and UK structures in England, while also of course covering UK structures in Scotland. The complication in Scotland stems mainly from the fact of the reserved and devolved split. MoJ can have an overview of the entire system in England and Wales. Leaving aside whether MoJ ought to take to itself the functions of oversight currently assigned to the AJTC, which we address below, that solution cannot be available in Scotland, simply because MoJ does not have competence in the devolved area. Without an overview of all parts of that system, decisions on the health or coherent development of the whole system, whether in Scotland or in England, are impossible.

Whether the proposed arrangements for independent review are satisfactory

The question arising in the Justice Committee’s first point is simply whether the arrangements proposed in relation to independent overview are satisfactory.

The Scottish Committee considers that the proposed arrangements for independent overview are unsatisfactory for the following reasons, which are enlarged on in the following paragraphs; There are no proposals for independent overview in the event of abolition of the AJTC; Overview by the MoJ (including HMCTS) cannot be considered to be independent; The Administrative Justice Advisory Group (AJAG) as proposed cannot be considered to be independent; The AJAG cannot in any event carry out an effective overview; and Such proposals as there are do not in any event amount to an overview of the administrative justice and tribunals system if that is taken to mean the administrative justice and tribunals system of the United Kingdom.

There are no proposals for independent overview

There is as yet no clear statement by MoJ setting out any arrangements for independent overview of the administrative justice and tribunals system. MoJ’s proposals to date appear to consist in their Administrative Justice and Tribunals Strategic Work Programme, published on 16 December and in points advanced in a supplementary paper presented to Parliament in connection with the Committee’s consideration of the abolition order.

Neither the Strategic Work Programme nor the additional material referred to appear to envisage any independent overview. The Strategic Work Programme makes it quite clear that any overview will be provided from within government. To the extent that MoJ intend that overview should be by HMCTS it is worth noting that HMCTS as an executive agency of government is as much part of government as the MoJ itself, and consequently incapable of providing an independent overview. The Scottish Committee has not seen the MoJ’s supplementary paper submitted to Parliament and referred to in the Scrutiny Committee’s 25th Report. From the section quoted, however, it would appear that the only overview of the administrative justice and tribunals system suggested by MoJ outwith its own (including HMCTS) operation is the Administrative Justice Advisory Group (AJAG).

---

4 It is true, of course, that in England there are tribunals which fall outside of the First and Second Tier structure but there are processes in place to bring them into that structure. In Scotland there are similar issues with devolved tribunals outside of the emerging Scottish Tribunals Service.
6 Para 34 - ‘The Government believes that 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. We believe that policy development and oversight of the wider administrative justice system should be led from within the MoJ."
To the extent that MoJ have not advanced any proposals which explicitly involve independent overview it follows that any such proposals are unsatisfactory.

**Overview by MoJ (including HMCTS) cannot be considered independent**

MoJ is part of the structure of central government. It is therefore not independent of but rather an integral part of government. HMCTS as an Executive Agency of government is no less part of government than the MoJ of which it is an integral part. It is the understanding of the Scottish Committee that Executive Agencies remain constitutionally part of their parent department. They implement government policy; they may be run semi-independently in terms of their Framework Agreements but any scope for independent action is circumscribed by their integration into that parent department.

It follows that insofar as proposals by the MoJ envisage overview being undertaken by it (including HMCTS) then such overview is not independent, and accordingly the MoJ’s proposals are unsatisfactory.

**The AJAG as proposed cannot be considered independent**

There is little detail as yet in relation to the nature or operation of the AJAG. The aims and objectives of AJAG have only recently been disclosed.7 There has been no statement by MoJ suggesting that it considers AJAG to be independent. AJAG’s current profile does not indicate independence, and in particular its members have not been appointed through an open and transparent processes by an independent body; it has no internal structure, and in particular no Chair or Convener not otherwise engaged within the MoJ (including HMCTS); it has no means either administratively or financially to organise its own business; there is nothing to suggest that it can fix the number, frequency or location of meetings; there is nothing to suggest that it can settle the priorities it considers appropriate to pursue; there is nothing to suggest that it is able to commission its own reports and papers; it has no apparent method to publish any reports it may be able to prepare, or minutes of meetings, working papers or findings; it has no website or e-contact systems.

In the absence of these characteristics, which are the absolute minimum, the AJAG cannot properly be considered to be independent. It follows therefore that insofar as the proposed arrangements would involve the AJAG then they are unsatisfactory.

**The AJAG as currently established cannot carry out a satisfactory overview**

There is little to suggest that MoJ have yet developed any real idea of what AJAG might do. In the absence of any such plan, or any indication that such a plan will be forthcoming, either from MoJ or indeed from the AJAG itself, it would be unwise to suggest that AJAG could realistically be a vehicle for delivery of overview as opposed simply to a vehicle for reacting to MoJ requests.

---

7 Para 25 25th Report supra setting out Aims and Objectives of AJAG

“Aims:
- To gauge how administrative justice is working, and identify any areas of concern or good practice.
- To provide early, informal, testing of policy initiatives. (This will not replace formal consultation undertaken for any significant policy proposals where this is appropriate.)

Objectives:
- To share user experiences of the system.
- To act as an expert forum for testing ideas and policy initiatives.
- To identify any areas within administrative justice that may benefit from reform and any key cross-system issues (including the drive to ensure more decisions are made right first time).
- To keep informed of current research and discuss with the Group research to be commissioned.
- To share best practice across administrative justice.
- To identify areas of administrative justice that are currently under-represented and would benefit from involvement in the Group’s work.”
The Scottish Committee understands that the AJAG, which is not listed by MoJ as an Advisory Group on its website, has met twice since its inception, and that it may be intended that it would meet in broad terms about twice a year. It is highly unlikely that on such a basis it will be able to develop a robust programme of work far less deliver it. The Scottish Committee is not aware of any internal structure within AJAG such as sub-committees which might increase the effective resources which it might be able to bring to bear on the various issues referred to in its terms of reference – footnote 3 above. Importantly, so far as the Scottish Committee is aware AJAG does not comprise any Scottish representation.

There can be no reasonable prospect that a body which meets only twice a year would be able to cover the breadth of its terms of reference within those meetings. Nor can there be any reasonable prospect that a body which has no resources beyond its membership will be able to address issues other than those placed before it by MoJ. While it is possible that AJAG could be further developed by MoJ it is unlikely if the points at 17 above are not met that AJAG could ever be considered to be a satisfactory vehicle for overview of the administrative justice system. If those points were met then AJAG might begin of course to resemble the AJTC and inevitable questions would then arise.

It is a matter of some concern to the Scottish Committee that the effect of abolition of AJTC on Scottish users is not apparently understood within MoJ. The fact that MoJ appears not to have even considered Scottish interests when framing its proposals for the AJAG suggests that Scotland is not on MoJ’s map. If that is correct then the position of Scottish users of the administrative justice system is even less satisfactory than that of those who live in England.

For the reasons given above the Scottish Committee does not consider the AJAG to be a satisfactory model from the user point of view, for communication and consultation with users of the administrative justice system.

Such proposals as there are do not amount to an overview of the administrative justice and tribunals system if that is taken to mean the administrative justice and tribunals system of the United Kingdom.

There are two distinct although connected matters to be considered in dealing with this point. Thus first there is the question of the impact of the proposals on the UK, and second there is the question of the impact of the proposals on Scotland;

Impact on UK - The MoJ Strategy appears to recognise some responsibility for the administrative justice system, at UK level, beyond England. It recognises that there is such a UK wide system. Its strategic work programme however concentrates on the situation in England. There is passing reference to devolved administrations and in particular that MoJ will work closely with the devolved administrations.

There is little evidence, however, to suggest any willingness on the part of MoJ for any engagement in an overview of the UK administrative justice system so far as Scotland is concerned. Even if the MoJ proposition that it is the appropriate vehicle for overview of the administrative justice system were to be accepted, it would appear that it does not see any responsibility beyond the functioning of the reserved tribunals under the responsibility of HMCTS. In particular, it appears not to wish to accept responsibility for the maintenance of a UK system so far as the proper development of an integrated Tribunals system in Scotland is concerned. As such, it is leaving out of the equation the development of the Scottish administrative justice system within the UK system.

In any event AJAG as currently constituted does not comprise any Scottish interests, far less Scottish interests in relation to matters of devolved competence. Late indications of extension of AJAG membership do not suggest a real engagement by MoJ with the Scottish administrative justice system, so far as the UK is concerned. They would suggest a tokenistic response at best.

Impact on Scotland - The Scottish Committee is naturally concerned primarily with the administrative justice system in Scotland. At the outset of this note we set out observations on the Scottish context, referring to the impact of the reserved devolved split and its complicating effect on the development of the Scottish Administrative Justice system. We referred to our view that in the absence of an overview of the whole system the development of that system becomes more challenging. In fact it becomes virtually impossible. At present the only structure within or around government which can exercise an overview of that system is the

---

AJTC. The AJTC discharges that function by considering developments both in Scotland as well as in England and Wales.

In our report on Tribunal Reform we recognise the importance of the AJTC’s role in championing the cause of the tribunal user from its position as the ‘hub of the wheel’ of administrative justice as envisaged by the Leggatt report. The Scottish Committee is seriously concerned that the abolition of the AJTC will lead to the removal of that perspective and that pan-UK overview. Under the existing constitutional arrangements, the administrative justice system in Scotland has an important UK dimension, which covers decision making by UK Government Departments, complaints to them and to UK Ombudsmen, in particular the Parliamentary Ombudsman, and appeals to UK or GB tribunals. Although people in Scotland are directly and significantly affected by that system, if (and when) the AJTC is abolished, and in the absence of any proposals by MoJ so far as those reserved areas are concerned, there will be no oversight of the ways in which that part of the system operates in Scotland.

It is apparent from its strategic work plan that MoJ wishes to develop an integrated and coherent administrative justice system for England. Since MoJ maintain that they have a responsibility for administrative justice at a UK level they would no doubt also concede that it is also a legitimate expectation that the administrative justice system in Scotland be similarly integrated and coherent. Even if MoJ maintain, as apparently they do, that they may themselves properly provide an oversight of the administrative justice system in England through their own internal systems and processes, they make no suggestion that a similar oversight can be provided for Scotland given the separate structures of devolution. It follows that MoJ’s intention to provide an integrated and coherent structure of oversight of administrative justice in England cannot be delivered in Scotland. Potentially Scotland is, therefore, left worse off in that it loses a complete overview while England still has the MoJ’s model, although that, so far as the Committee, is flawed. Accordingly the MoJ’s proposals for future oversight so far as matters Scottish are concerned, are unsatisfactory.

The Justice Committee will be aware of the intention on the part of the Scottish Government, in the event of abolition, to set up a non-statutory advisory committee that would be independent of government and would have oversight of administrative justice in Scotland. Its ability to provide effective oversight over administrative justice in Scotland is at the least prejudiced by the failure of MoJ to present any meaningful proposals as to how it will provide such oversight in Scotland. The administrative justice system in Scotland may properly be considered to be devolved but the failure of MoJ to present any developed proposals on devolution of responsibility for the reserved tribunals is bound to lead to an unsatisfactory hiatus and lack of clarity when it comes to the oversight of the system in Scotland.

1. For all of these reasons the Scottish Committee considers that MoJ’s proposals for oversight of the administrative justice system are deeply unsatisfactory and based on inadequate, if any, consideration of their impact on Scotland.

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

The Scottish Committee has noted a reluctance on the part of MoJ to engage with the development of the Scottish administrative justice system. It recognises that development of that system may properly be a matter for the Scottish Government but also recognises that the development of an integrated system is unlikely unless and until the UK Government addresses the issues of reserved tribunals operating within the HMCTS structures in Scotland.

The Scottish Committee is not aware of the precise resources available to MoJ so far as Scotland is concerned but doubts whether, given its level of commitment to date, it could continue functions undertaken hitherto by AJTC so far as Scotland is concerned.

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

The Scottish Committee is aware of comments by the House of Lords Scrutiny Committee on the matter of MoJ’s estimates to date. It does not have access to MoJ calculations in this area, but on the basis of its assessment of cost savings since the start of the abolition process it would be surprised if MoJ’s estimates of savings did not remain somewhat inflated.

9 Tribunal Reform in Scotland A Vision for the Future
General Comments

The Justice Committee will be aware of the intention on the part of the Scottish Government, in the event of abolition of the AJTC, to set up a non-statutory advisory committee that would be independent of government and would have oversight of administrative justice in Scotland. The ability of any such non-statutory body to provide effective oversight over administrative justice in Scotland is at the least hindered by the failure of MoJ to present any meaningful proposals as to how it proposes to provide such oversight in Scotland in relation to matters which will continue within its responsibility.

The administrative justice system in Scotland is, in our view, devolved, even if critical aspects of that system are reserved. The failure of MoJ to present any realistic proposals on oversight means that there is a gap in the competence of any new non-statutory body which will at the least find it more difficult to monitor activity in reserved areas. Monitoring activity within the reserved areas will be an important aspect of oversight of the administrative justice system in Scotland.

Proposals for oversight are of course separate and distinct from the wider issues of what steps MoJ may take in order to assist the development of the Scottish Administrative Justice system, as for example the unresolved issue of transfer of responsibility for reserved tribunals in Scotland. The Scottish Committee recognises that that last mentioned issue falls outside of the Justice Committee’s call for evidence. However in its view the MoJ’s failure to address the issue of reserved tribunals, taken along with its failure to offer proper proposals for the oversight of the UK administrative justice system is indicative of a more general failure to take seriously the interests of Scottish users of that system.

Whatever MoJ’s reasons for the decision to seek abolition of the AJTC, the Scottish Committee believes that neither MoJ’s position on abolition nor its proposals in relation to the aftermath, suggest the fullest possible appreciation on the part of MoJ of the nature of administrative justice in Scotland. The Scottish Committee appreciates that the task for MoJ is not straightforward. It accepts that Scottish matters cannot always be at the forefront of its thinking. However it does not believe that MoJ properly understands the implications of there being more than one legal system in the UK.

If the Scottish Committee’s view of the MoJ’s appreciation of these matters is correct, and if the MoJ has indeed not properly worked out the impact of its proposals, then that ought to be of real concern, and MoJ’s proposals should be assessed accordingly.

February 2013
Written evidence from Professor Colin Reid

Administrative Justice and Tribunals Council

These comments are made in a wholly personal capacity and do not represent the views of any institution or organisation.

1. I would support the retention of the Administrative Justice and Tribunals Council (AJTC). Although the recent changes to the tribunal system, have created a position where tribunals are more co-ordinated and consistent and have a higher profile (all areas where in the past the role of the Council on Tribunals was vital), there are new opportunities for significant progress beyond the field of any one government department which will be lost if the AJTC is abolished.

2. One current danger is that the very strength 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 (and to pay its way and more). The expansion of the AJTC’s remit from the narrower focus of the Council on Tribunals is crucial here. 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. This overview straddles many different departmental responsibilities.

3. 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. This is where the AJTC as a separate body, not as an advisory group set within one department, can play a major role; largely freed now from issues arising from the tribunal reforms it can concentrate on fulfilling the wider remit it was given only a few years ago. The fact that some tribunals and other procedures operate at a UK level is a further argument for this function not being settled within a Ministry whose prime focus is on just one of the three (or one and a half of the three and a half, depending on how Wales is treated) jurisdictions within the UK.

4. By improving the whole system of administrative justice from beginning to end, the AJTC can bring benefits to citizens, and to administrative and judicial bodies. Moreover, by reducing the number of resource-intensive formal redress procedures, substantial savings can be made. It should be retained, with its emphasis firmly placed on administrative justice as a whole.

February 2013
Written evidence from NASAC

Abolishment of the Administrative Justice and Tribunals Council

This evidence relates to the School Admission Independent Appeal Panels (IAPs) and Exclusion Independent Review Panels (IRPs) which are currently supervised by the Administrative Justice Tribunals Council (AJTC).

Summary:

- IAPs and IRPs remain outside Her Majesty’s Courts and Tribunals Service (HMCTS).
- In round numbers, the IAPs deal with 61,000 cases each year and IRPs with less than 1,000. Together, this equates to 8-9% of the total number of cases heard by tribunals in HMCTS.
- The Panels do not have a President or even a formal body to represent the members.
- There is no User Group to represent the parents’ best interests, in admission appeals in particular.
- Currently, the Panels are the responsibility of each of the 150 local authorities (LAs) as well as each own admission authority school. This amounts to a few hundred bodies organising these Panels.
- When (nearly) all schools have converted to academy status, each academy will be responsible for organising their own Panels, resulting in a dramatic increase in the number of bodies responsible for organising these Panels.
- The former Council on Tribunals (CoT) now the AJTC has always had serious concerns regarding the operation of these Panels. Concerns are even greater in respect of schools that run their own Panels, such as academies, foundation and voluntary aided schools.
- The AJTC performs four key functions:
  - Supervising by means of visits to observe hearings.
  - Responding to DfE consultations on proposed policy changes.
  - Providing a degree of protection to Panels who can be put under pressure by the LA or own admission authority schools because there is a lack of true independence.
  - Protecting the interests of the end users, i.e., parents and their children.
- Indications are that the IAPs and IRPs will not be transferred to HMCTS.
- The Ministry of Justice (MoJ) has only made one approach to the National Association of Appeals Clerks (NASAC) regarding these Panels but only in respect of the training of IRPs, which was not taken forward.
- In conclusion, there is no evidence to suggest that the MoJ has the capacity, sufficient resources and the necessary expertise to carry out the functions and work currently undertaken by the AJTC with regard to IAPs and IRPs.

---

NASAC, formerly known as the Education Appeals Support Initiative (EASI) Group. NASAC is comprised of schools admissions and exclusion appeals administrators and clerks from local authorities (LAs), (independent) clerks of own admission authorities, i.e., Voluntary Aided, Trust and Foundation schools, and academies, as well as dioceses in England.
Context

1. This evidence is submitted on behalf of NASAC, formerly known as the Education Appeals Support Initiative (EASI) Group. NASAC is comprised of schools admissions and exclusion appeals administrators and clerks from local authorities (LAs), (independent) clerks of own admission authorities, i.e., Voluntary Aided, Trust and Foundation schools, and academies, as well as dioceses in England.

2. IAPs and IRPs remain outside HMCTS. As locally-based tribunals they operate in a vacuum with no Presidential Head or even a formal body to represent them. NASAC (formerly the EASI Group) was formed in 1999 by LAs and diocesan clerks who recognised the difficulties encountered in this field and the need to improve the functioning of these Panels.

3. The AJTC’s predecessor body, the Council on Tribunals (CoT), produced a Special Report on School Admissions and Exclusions Appeal Panels in 2003 due to its serious concerns regarding the functioning of these Panels. The report recognised the aims of the EASI Group and has been very supportive of the Group’s work throughout.

4. In round terms, the Panels deal with approximately 61,000 admission appeal cases and around 1,000 permanent exclusion appeals each year.

5. Although these Panels are outside HMCTS, in comparison with the First Tier Immigration and Asylum Chamber, which dealt with 110,000 cases representing 15% of Service total caseload, the IAPs and IRPs heard the equivalent of 8-9% of all HMCTS cases, which represents a significant jurisdiction.

6. These Panels, in particular IAPs, are one of the Tribunals that operate at the heart of local communities and represent a noteworthy proportion of cases heard by Tribunals.

Key Functions:

7. The AJTC performs four key functions:

   a) Supervising by means of visits to observe hearings.
   b) Responding to DfE consultations on proposed policy changes.
   c) Providing a degree of protection to Panel members who can be put under pressure by the LA or own admission authority schools because there is a lack of true independence.
   d) Protecting the interests of the end users, i.e., the parents and their children.

Supervision

8. The AJTC supervises these Panels, which includes observing a number of hearings every year in order to ensure the proceedings are conducted in accordance with the relevant statutory DfE Codes and guidance and Tribunal standards.
9. As each Local Authority (150 in total), and own admission authority schools, run these panels, there are a few hundred panels.

10. However, at some future date, almost all schools will have achieved academy status and will therefore operate as their own admission authority, and each will have responsibility for running their own Panels. Potentially, this would mean that there could be several thousand academy Panels that will operate without proper supervision.

11. 13. The Local Government Ombudsman (LGO) investigates parental complaints regarding the admissions and exclusions appeals process for all schools, other than for academies (whose complaints are dealt with in house by the Secretary of State for Education, through the Education Funding Agency). It is notable that the majority of the LGO’s reports of maladministration involve the schools that are their own admission authority and run their own panels.

12. Supervision visits by members of the AJTC consider whether the Panels have been properly selected to ensure true independence, have been trained in accordance with the requirements of the legislation, and are operating to the necessary standards expected of tribunals.

Consultation

13. The DfE is required to consult the AJTC regarding any changes in the legislation and the statutory Codes/guidance. Since 1999, the DfE has regularly amended the legislation and published five new Codes on school admissions, five on admissions appeals, and four guides on exclusions. It is unlikely the MoJ would have sufficient capacity and resources to engage in these matters to the extent that the AJTC has in recent years.

14. The AJTC, having the relevant knowledge and experience, responds to these consultations taking into account the wider implications of any proposals in respect of both the actual area of legislation, the users who have no representation and, in particular, the panel members who operate in a vacuum without a President.

15. Even if the MoJ did engage with DfE consultations, being another Department of State, it is far less likely to be as robust in challenging any proposed changes to the legislation, codes and guidance, which is a weakness in itself.

16. The AJTC, in collaboration with NASAC, recently produced two Best Practice Guides for Admission Appeals and Exclusion Reviews because the latest DfE Codes/Guidance (2012) have been condensed to such an extent that they provide insufficient guidance, which is now resulting in different practices in different local authorities and schools. Again, it is highly unlikely the MoJ would have the capacity to undertake such work.
Protection of Panel members

17. The IAPs and IRPs are not truly independent, particularly those of the own admission authority schools, where the schools, i.e., one of the parties to the appeal, selects and appoints their own panel members.

18. There have been occasions when schools or LAs have not liked a decision and they have placed undue pressure on the panel members in later appeals, or even sent out a different decision letter to that of the Panel’s actual decision, or not allowed the members to sit again even though the decision was lawful and not irrational.

19. Therefore, in these circumstances either the panel members or their clerks can refer to the AJTC with the confidence that they can provide advice.

Protection of users

20. The AJTC considers the interests of the parents who appeal in its consultation responses. When this Government proposed creating IRPs (which it did in September 2012) and limited their powers to that of a review, the AJTC highlighted that 80% of excluded pupils have Special Educational Needs (SEN).

21. The new exclusion review hearing regime now includes a requirement that parents, who apply to IRPs for a review of the decision to permanently exclude their child, should be asked if they want an SEN Expert to attend the hearing to assist the IRP.

22. It is unlikely that the MoJ will actively engage in protecting the interests of users to this extent, if nothing else, due to the lack of in-depth knowledge that is required.

23. The MoJ has not actively engaged with the IAPs and IRPs other than making one enquiry limited to IRP training, which was not taken forward after one meeting with the NASAC national coordinator.

Conclusion

24. In any event, there is much work that the AJTC can take forward in relation to the supervision and organisation of the IAPs and IRPs, which the MoJ would not have the capacity for, particularly if, as indicated, these Panels will remain outside HMCTS.

25. As a body, the Council, as AJTC and formerly CoT, has existed for over 50 years, which in itself demonstrates its functions are essential. In 2007, its remit was broadened, so to abolish it now would be quite irrational.

26. Therefore, overall, it is considered that the MoJ will not have the requisite capacity, sufficient resources and the necessary detailed knowledge and
expertise to continue delivering and taking forward the four key functions currently undertaken by the AJTC.

February 2013
1. Proposed arrangements for independent overview of the administrative justice and tribunals system, including the role and membership of the Administrative Justice Advisory Group

The AJTC currently provides independent advice to the Government on the administrative justice and tribunals system with a particular user focus. The Government is not bound to accept the advice or policy proposals provided by the AJTC, but where it has accepted proposals the Ministry of Justice (MoJ) would resource their implementation. The Government considers it more efficient to develop policy proposals from within the specialist Justice Policy Group within the MoJ responsible for implementation, drawing upon the expertise of user representative groups that form the Administrative Justice Advisory Group.

The Administrative Justice Advisory Group was formed in May 2012 to provide a user-focused perspective directly to policy proposals developed by the MoJ. Its membership is flexible and open to meet the changing demands of the system, but it represents a comprehensive cross-section of groups that work with users across the administrative justice and tribunals system. Its terms of reference and current membership is attached at annex A. We are currently working with the Scottish and Welsh Governments to decide how users of Scottish and Welsh tribunals should be represented on the Group. These decisions are partly contingent upon the creation of successor bodies to their AJTC committees; the Scottish and Welsh Governments are currently considering the precise remits of non-statutory successor bodies to AJTC sub-committees in order to continue overseeing devolved tribunal reform.

Over the last few years, as the unified tribunal system has developed, oversight of the tribunal system independent from the central Government departments and agencies making initial decisions has been provided by Her Majesty’s Courts and Tribunals Service (HMCTS) – previously the Tribunal Service. The aim of HMCTS is to run an efficient and effective courts and tribunals system, which enables the rule of law to be upheld, and provides access to justice for all. 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 need for a standing body to oversee tribunals. The Government
therefore considers the role of the AJTC in this context to be a partial duplication of effort.

The status of those tribunals devolved to the Scottish and Welsh Governments (currently within the ambit of the AJTC’s oversight role) is different from those that relate to reserved or English matters. While tribunal reform programmes are underway in both Wales and Scotland, the Government recognises that they are considerably less well advanced than in England. The MoJ has therefore agreed to fund some continuing provision of oversight in Scotland and Wales on an interim basis until their reform programmes are further advanced. Beyond this period both administrations may decide to continue operating separate advisory bodies rather than oversee their systems and develop policy internally. Such choices will take into account local factors that may lend to different approaches to those proposed by the UK Government.

The Government recognises that some parts of the administrative justice and tribunals system remain outside of the unified tribunal structure administered by HMCTS. The MoJ proposes to adopt a light touch oversight role for these tribunals, liaising with the relevant administrator bodies and addressing issues directly with the Departments with policy responsibility for the appeal rights or service standards to which they relate. The MoJ will monitor the performance of tribunals outside the unified structure, drawing on available performance data; annual reports; business or development plans; parliamentary, user and judicial feedback. This will inform work with sponsoring Departments or public bodies to improve performance against the principles of administrative justice. Where there is a case to transfer the outlying parts of the system into HMCTS to improve efficiency, proportionality or access to justice, the Government will continue to do so.

Issues arising from the parts of the system not administered by HMCTS will be discussed with the Administrative Justice Advisory Group, either as part of its formal agenda or by exception through focused workshops or written consultations.

The table attached at annex B provides a list of AJTC’s current functions and how they will be covered following the proposed abolition. Annex C maps out the administrative justice and tribunals system as it stands and how it will be overseen following the proposed abolition of the AJTC.
2. Resources and expertise will be available within the Ministry of Justice to carry out continuing functions undertaken hitherto by the AJTC

The Ministry of Justice operates on the basis of flexible resource management. This means that staff are deployed flexibly according to the demands of the work prioritised by the Department. Each priority is delivered by an interdisciplinary team, with expertise drawn from the directorates responsible for policy, finance, legal, analysis and operations. This flexible approach is in line with the Government’s Civil Service reform strategy, which stresses the importance of Civil Servants responding flexibly and with agility to new priorities and changing demands.

This flexible approach makes it difficult to provide definitive projections of resourcing both within the Justice Policy Group and HM Courts and Tribunals Service to oversee the administrative justice and tribunals system. The reality is that the MoJ will not resource a standing team to ‘look after’ administrative justice and tribunals policy as it may have done in the past. Resourcing will be focused on outcomes against priorities. That is why Justice Ministers took the step in December 2012 of making an open commitment to deliver its priorities set out in the administrative justice and tribunals strategic work programme published in December 2012.

The strategic work programme sets out the objectives that the Government intends to achieve over the next three years. Each strand of the work programme will be resourced sufficiently – drawing upon the right level of expertise across the disciplines of policy, finance, legal, analysis and operations - to achieve those objectives. Teams working on each work strand will be drawn from across the MoJ to ensure the right level of expertise.

Policy responsibility for administrative justice and tribunals sits with the Administrative Justice, Court and Tribunal Fees and Coroners and Inquiries Unit within the Justice Policy Group. This Unit currently has 29 members of staff but covers subject matters which go beyond administrative justice and tribunals. As stated above, staff within this unit can be deployed flexibly to meet demands, but 17 members of this unit are likely to have significant ongoing responsibilities which relate directly to administrative justice and tribunals, with 12 people having administrative justice policy responsibilities as a substantive part of their annual performance objectives.
All members of Justice Policy Group have been recruited for their ability and expertise in developing Government policy. Subject-specific expertise is taken into account when deploying staff to specific work strands. For instance, the considerable expertise built up in the team around the introduction of court fees can be drawn upon to examine new tribunal funding models, which is an objective in the published strategic work programme and will also feed into our planned work on improving initial decision making.

Further expertise will be drawn upon from other parts of the MoJ. For instance, the development of end-to-end performance metrics will require analytical input from the Department’s Analytical Services and operational expertise from HMCTS. By setting clear objectives and expected outcomes for work in this area we can ensure that sufficient resources will be made available from each of the relevant teams across the Department.

The user perspective provided by the Administrative Justice Advisory Group is being provided on a voluntary basis by key groups within the system. The secretariat for this Group is provided from within the Justice Policy Group at minimal cost.

3. The Government’s estimate of cost savings arising from closing the AJTC

The Impact Assessment published alongside the consultation response in December 2011 estimated the costs and benefits from abolition of the AJTC for 2012/13 to 2015/16. These estimates were based on an anticipated closure date at that time of 30 September 2012. Net benefits to MoJ for 2012/13 to 2015/16 were estimated at this time to be in the region of £4.3m. Using HMT methodology, these estimates were predicated on historic operating costs of the AJTC of £1.2m per annum, uprated for inflation.

Our most recent analysis of cost savings from closing the AJTC is based on an anticipated closure date of 31 March 2013 (subject to parliamentary scrutiny and passage of the abolition order, closure is now likely to be late April 2013). Gross cumulative savings to MoJ of £1.4m are estimated from closure across the remainder of the Spending Review period, up to 31 March 2015. These estimates take into account that the AJTC has been required to reduce its expenditure in 2011/12 and 2012/13 and is now operating at a cost of around £0.7m pa, and therefore the full running cost at the start of the SR10 period (£1.2m in 2010/11) will not be saved from
 AJTC 04

closure alone. They also reflect savings over a slightly shorter period to align with the Spending Review period. The use of the reduced figure annual operating costs in our estimates reflects the comments made by the Public Administration Select Committee (PASC) in its March 2012 report on the future oversight of the administrative justice system that: "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."

PASC also commented that: "We also suspect that the full cost of carrying out these functions within the MoJ has been underestimated." The MoJ does not consider there to be any additional cost from taking on any of the functions of the AJTC. Staff members working on administrative justice are drawn from across the MoJ, including HMCTS. Staff working on projects in this area will be drawn from across disciplines, with expertise in policy, finance, law, analysis and operations. MoJ staff are deployed flexibly according to the demands of the work, in line with the wider approach to ensure that resources are prioritised efficiently and effectively to meet departmental priorities. This approach is in line with the Government’s wider vision on civil service reform, calling for a faster, more flexible workforce committed to open policy making.

It should also be noted that should AJTC continue in its present form, there would still need to be a policy team within MoJ to act upon AJTC advice and reports, should these be accepted by Ministers. AJTC functions of keeping the administrative justice and tribunal system under review and considering ways to make the system accessible, fair and efficient are already undertaken by MoJ and HMCTS officials. By abolishing the AJTC we will be removing duplication of work in this area and ensuring that responsibility and accountability for effecting improvements to the system rests with the department. MoJ is best placed to work directly with other original decision-making departments and agencies and to advise Ministers accordingly.

There are though other costs associated with closure and these are now estimated to be up to £0.3m in 2013/14 for possible redundancies at the AJTC and £0.15m in each of 2013/14 and 2014/15, which is 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 following closure are therefore £0.6m. Net cumulative savings from closure over the remaining
Spending Review period are therefore now estimated to be £0.8m. MoJ would of course continue to make savings beyond the SR period from no longer funding the £0.7m per annum running costs of the AJTC.

The revised Impact Assessment published on 28 January 2013 sets out the total economic impact of closure of the AJTC over a ten year period. The 10 year Net Present Value of closure of the AJTC is estimated to be £5.0m.

Supplementary material:
Annex B: Table of AJTC functions and how they will be covered after proposed abolition
Annex C: Map of the administrative justice and tribunals system
Annex D: Impact Assessment of December 2011

February 2013
Administrative Justice Advisory Group

Last Updated: 09/01/2013

Terms of Reference:

Aims:

- To gauge how administrative justice is working, and identify any areas of concern or good practice.
- To provide early, informal, testing of policy initiatives. (This will not replace formal consultation undertaken for any significant policy proposals where this is appropriate.)

Objectives:

- To share user experiences of the system.
- To act as an expert forum for testing ideas and policy initiatives.
- To identify any areas within administrative justice that may benefit from reform and any key cross-system issues (including the drive to ensure more decisions are made right first time).
- To keep informed of current research and discuss with the Group research to be commissioned.
- To share best practice across administrative justice.
- To identify areas of administrative justice that are currently under-represented and would benefit from involvement in the Group’s work.

Membership:

- The group's membership is not fixed, and MoJ may invite additional members to join where a lack of representation is identified in a particular area.
- The Group will aim to include representation from across the administrative justice system, including users and tribunal judiciary, and cover the UK as a whole.

Operations:

- Group meetings are intended to take place biannually, at roughly six month intervals.
- Other events may be arranged as required to address particular policy areas.
- There will be ongoing two-way communication between meetings. MoJ will circulate policy ideas and proposals for feedback by e-mail.
- A dedicated e-mail inbox has been set up for members to send in any policy issues that they wish to discuss with MoJ and the Group.
Current Membership:

<table>
<thead>
<tr>
<th>Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Justice (Chair)</td>
</tr>
<tr>
<td>Her Majesty’s Courts and Tribunals Service</td>
</tr>
<tr>
<td>Citizens Advice Bureau</td>
</tr>
<tr>
<td>Independent Complaints Reviewer</td>
</tr>
<tr>
<td>AdviceUK</td>
</tr>
<tr>
<td>Free Representation Unit</td>
</tr>
<tr>
<td>Parent Partnership Network</td>
</tr>
<tr>
<td>Mind (the mental health charity)</td>
</tr>
<tr>
<td>Care Quality Commission</td>
</tr>
<tr>
<td>Coram Children’s Legal Centre</td>
</tr>
<tr>
<td>Civil Mediation Council</td>
</tr>
<tr>
<td>Ombudsman Association</td>
</tr>
<tr>
<td>Immigration Law Practitioners’ Association</td>
</tr>
<tr>
<td>Civil Mediation Council</td>
</tr>
<tr>
<td>Disability Rights UK</td>
</tr>
<tr>
<td>Office of the Senior President of Tribunals (observer)</td>
</tr>
</tbody>
</table>

Further members will be identified from user-representative groups in Scotland and Wales.
## LIST OF AJTC FUNCTIONS IN SCHEDULE 7 OF THE TRIBUNALS COURTS AND ENFORCEMENT ACT 2007 AND IF/HOW THESE WILL BE COVERED FOLLOWING ABOLITION

<table>
<thead>
<tr>
<th>Paragraph in Schedule 7, TCE Act 2007</th>
<th>Description of AJTC function</th>
<th>How the function will be undertaken by MoJ following abolition of the AJTC</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>Functions with respect to the administrative justice system:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(1) The Council is to—</td>
<td>MoJ will keep the administrative justice system under review. As with the AJTC’s duty to consider the system, we believe that administrative justice should be underpinned by three key principles: fairness, accessibility and efficiency. The success of the improvements we make across the system will be measured against these principles. MoJ’s objectives (as established in MoJ’s strategic work programme for administrative justice and tribunals for 2013-2016) for the governance of the administrative justice and tribunals system are:</td>
</tr>
<tr>
<td></td>
<td>a) Keep the administrative justice system under review</td>
<td><strong>Objective 1:</strong> To strengthen arrangements with other departments and public bodies to oversee the development and delivery of administrative justice and tribunals policy.</td>
</tr>
<tr>
<td></td>
<td>b) Consider ways to make the system accessible, fair and efficient</td>
<td><strong>Objective 2:</strong> To establish, encourage and maintain a user focus that supports open policy making.</td>
</tr>
<tr>
<td></td>
<td>c) Advise the persons mentioned in sub-paragraph (2) on the development of the system [these are the Lord Chancellor, the Scottish Ministers, the Welsh Ministers and the Senior President of Tribunals]</td>
<td>We will achieve objective 1 by building on existing bi-lateral arrangements with the departments that use the tribunal system, refreshing formal protocols where they exist to:</td>
</tr>
<tr>
<td></td>
<td>d) Refer proposals for changes in the system to those persons</td>
<td>- set clear expectations that inefficient use of the system will be managed down;</td>
</tr>
<tr>
<td></td>
<td>e) Make proposals for research into the system</td>
<td>- develop performance measures that encourage this; and</td>
</tr>
<tr>
<td></td>
<td>(3) The Council may make such reports as it considers appropriate on any of the matters mentioned in sub-paragraph (1).</td>
<td>- share good practice across the system.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>We will further strengthen these bi-lateral arrangements by working closely with other key parties in the administrative justice and tribunals system – such as the judiciary, HMCTS, various public sector ombudsmen including the Parliamentary and Health Service Ombudsman (PHSO) and the devolved administrations – to support our consideration of performance issues and help spread good practice across jurisdictions.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>We have already gone some way towards achieving objective 2 by establishing the Administrative Justice Advisory Group, which met for the first time in May 2012. The</td>
</tr>
<tr>
<td>Paragraph in Schedule 7, TCE Act 2007</td>
<td>Description of AJTC function</td>
<td>How the function will be undertaken by MoJ following abolition of the AJTC</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>--------------------------------</td>
<td>--------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Group is made up of representatives from organisations that work closely with users from across a range of interests in the administrative justice and tribunals system. This expert group will provide a vital perspective on the performance of and issues within the system to help the MoJ to develop policies for improving the system and delivery options that meet the needs of users. It will draw upon information captured by the MoJ from across the system, including jurisdictional user groups. To support the development of specific proposals we will hold targeted policy sessions with academics, representative groups and a wide network of interested parties on priority issues.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Government departments, public authorities and agencies have a responsibility to ensure that as many decisions as possible are right first time. As a dispute proceeds through the process from the original decision maker through to resolution there will be an increase in the cost to and time required from both Government and users of the system. Our objectives on improving initial decision making are:

**Objective 6: To establish improved end-to-end performance data to drive better decision making.**

We will achieve objective 6 by working with other departments, starting with the Department for Work and Pensions, the Home Office, Department for Business, Innovation and Skills and Department for Education, to establish baseline data for larger jurisdictional areas. This information will provide a fuller picture of where the stresses are in high volume appeals processes and identify priority areas for action with partners across Government. We will build on this in other jurisdictions.

**Objective 7: To ensure information is made available to enable improvements in the quality of initial decision making.**

We will achieve objective 7 by building on recent achievements, particularly in the Social Security and Child Support jurisdiction, to identify new approaches for providing enhanced feedback from tribunals to decision makers. We will pilot approaches in 2013/14 and evaluate how useful different feedback sources are to improving decision making. This will inform our discussions with other parts of Government and allow us to target new feedback approaches where is most effective and will improve performance.
<table>
<thead>
<tr>
<th>Paragraph in Schedule 7, TCE Act 2007</th>
<th>Description of AJTC function</th>
<th>How the function will be undertaken by MoJ following abolition of the AJTC</th>
</tr>
</thead>
<tbody>
<tr>
<td>14(1)</td>
<td>General functions with respect to tribunals: The Council is to— (a) keep under review, and report on, the constitution and working— (i) of listed tribunals in general, and (ii) of each listed tribunal, (b) consider, and report on, any other matter— (i) that relates to listed tribunals in general or to a particular listed tribunal, and (ii) that the Council determines to be of special importance, and (c) consider, and report on, any particular matter referred to the Council— (i) that relates to tribunals in general or to any particular tribunal, and (ii) whose referral to the Council falls within paragraph 16.</td>
<td>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. We believe that policy development and oversight of tribunals, and the wider administrative justice system, should be led from within the MoJ. A number of tribunals still exist outside the unified HMCTS structure. Government policy has been to bring all central tribunals into this structure in order to ensure a separation between the tribunal and the sponsoring department or public authority. However, transferring tribunal administration and judiciary into the HMCTS system can be resource intensive. With the majority of the restructuring work complete, we want to look more carefully at the case for transferring in those tribunals that remain outside of the unified system and commit resource only where there are clear benefits to doing so. Our objectives for non-HMCTS tribunals and new appeal rights are: Objective 3: To prioritise tribunal transfers into the unified structure on a cost/benefit basis and to maintain oversight of those that remain outside of the system. Objective 4: To ensure new appeal rights proposed by Government are fair, efficient and accessible. We will achieve objective 3 by monitoring the performance of tribunals outside the unified structure, drawing on available performance data; annual reports; business or development plans; parliamentary, user and judicial feedback. We will use this to work with sponsoring departments to review and improve performance against the principles of administrative justice. We will consider the case for transferring specific tribunals into the unified structure where there are arguments for improving efficiency, proportionality or access to justice. Where there is a case we will include transfer work streams in our business plans. We will achieve objective 4 by developing a new framework for reviewing and handling appeal rights as they are proposed by policy makers in Government. We will work closely with other departments to streamline the process of considering proposals for new appeal rights before they are more fully developed. This will mean that we are involved at an early stage to ensure that, where an appeal right is required, it is...</td>
</tr>
<tr>
<td>Paragraph in Schedule 7, TCE Act 2007</td>
<td>Description of AJTC function</td>
<td>How the function will be undertaken by MoJ following abolition of the AJTC</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>-------------------------------</td>
<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>designed with the rest of the system in mind so that it is proportionate, drives the right incentives and is coherent with the rules and regulations of the wider tribunal system. We will develop this process – which we will call the appeal rights gateway – in consultation with other key delivery partners, such as the Tribunal Procedure Committee – in 2013/14.</td>
</tr>
<tr>
<td>14(2)</td>
<td>The Council may scrutinise and comment on legislation, existing or proposed, relating to tribunals or to any particular tribunal.</td>
<td>MoJ believes this AJTC function is no longer required. We are now reaching the end of a period of significant structural reform in the area of administrative justice. Legislative change, enacted by the Tribunals, Courts and Enforcement Act 2007, put in train many of the ambitions of the Leggatt review leading to the much healthier system we now have in place today. An independent tribunal system has been created with two tiers, administered by HMCTS, and covering most of the key areas that attract appeals. Our intention is now to move beyond structural reform, and the legislation required to bring about structural reform, and separation of decision-making from redress mechanisms, to making the independent administrative justice and tribunals system work more effectively and efficiently for its users and for the taxpayers who fund it. There is a requirement in section 42(5) of the Tribunals, Courts and Enforcement Act 2007 for the Lord Chancellor to consult the AJTC before making an order prescribing fees in relation to tribunal proceedings. MoJ believes that this consultative function can be sufficiently fulfilled by the Senior President of Tribunals, who must also be consulted as per section 42(5), and that this is commensurate to the statutory requirement in the Family Courts to consult the President of the Family Division before making an order regarding court fees, as per section 92 of the Courts Act 2003.</td>
</tr>
<tr>
<td>15</td>
<td>General functions with respect to statutory inquiries: The Council is to— (a) keep under review, and report on, the constitution and working of statutory inquiries, both in general and by</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Functions in relation to statutory inquiries include considering and reporting on any matter relating to statutory inquiries that the AJTC determines as being of special importance. In practice, the AJTC has focused on inquiries relating to land use. the AJTC’s role in relation to statutory inquiries is no longer considered necessary because the Planning Inspectorate, an Executive Agency of the Department for Communities and Local Government, has now established a robust Quality Assurance Unit, which</td>
<td></td>
</tr>
<tr>
<td>Paragraph in Schedule 7, TCE Act 2007</td>
<td>Description of AJTC function</td>
<td>How the function will be undertaken by MoJ following abolition of the AJTC</td>
</tr>
<tr>
<td>---------------------------------------</td>
<td>-----------------------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>reference to statutory provisions under which statutory inquiries of different descriptions may be held, (b)consider, and report on, any other matter— (i)that relates to statutory inquiries in general, to statutory inquiries of a particular description or to any particular statutory inquiry, and (ii)that the Council determines to be of special importance, and (c)consider, and report on, any particular matter referred to the Council— (i)that relates to statutory inquiries in general, to statutory inquiries of a particular description or to any particular statutory inquiry, and (ii)whose referral to the Council falls within paragraph 16.</td>
<td>operates across all functions of the Planning Inspectorate to ensure appropriate standards and procedures are upheld. This unit is able, as necessary, to recommend changes to the Planning Inspectorate’s Audit Committee, or the Inspectorate’s main board. The board also includes non-Executive Directors which ensures external scrutiny.</td>
<td></td>
</tr>
</tbody>
</table>

17 Reports by the Council under paragraphs 14 and 15:
(1)A report by the Council on a matter referred to it under | MoJ will report annually to Parliament on the administrative justice system and how we are meeting the objectives set out in the strategic work programme. In its March 2012 report on the future oversight of the administrative justice system, the Public Administration Select Committee recommended that, in the interests of |
<table>
<thead>
<tr>
<th>Paragraph in Schedule 7, TCE Act 2007</th>
<th>Description of AJTC function</th>
<th>How the function will be undertaken by MoJ following abolition of the AJTC</th>
</tr>
</thead>
<tbody>
<tr>
<td>paragraph 14(1)(c) or 15(c) must be made to the authority or authorities who referred the matter. (2) Any other report by the Council under paragraph 14 or 15— (a) must be made to the Lord Chancellor, (b) if it relates to Wales, must be made also to the Welsh Ministers, and (c) if it relates to Scotland, must be made also to the Scottish Ministers. (3) The Lord Chancellor must lay before each House of Parliament every report made by the Council to him under this paragraph, other than a report that relates only to matters within sub-paragraph (4).</td>
<td>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. Arrangements will be made to report to Parliament on the issues suggested by the Committee, building on the annual report and statistics already published by HMCTS.</td>
<td></td>
</tr>
</tbody>
</table>

18 Referral of matters to, and reports by, the Scottish Committee 19 Referral of matters to, and reports by, the Welsh Committee HMCTS is responsible for the administration of tribunals in England and non-devolved tribunals. Certain elements of the administrative justice and tribunals system are devolved to Scotland, Wales and Northern Ireland. The picture is different in each case, meaning that the challenge to decide where processes need to be aligned and where they can be handled differently varies across each administration. The MoJ will work closely with each of these administrations to identify the best approach to overseeing the system and how it operates and coheres across borders. Programmes are underway across the devolved administrations to improve tribunal services. Some jurisdictions are devolved – for example war pensions in Scotland have their own tribunal – while others – such as immigration and asylum – are reserved,
<table>
<thead>
<tr>
<th>Paragraph in Schedule 7, TCE Act 2007</th>
<th>Description of AJTC function</th>
<th>How the function will be undertaken by MoJ following abolition of the AJTC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>meaning they are managed by a UK-wide administration.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>In Scotland, as part of the Making Justice Work Programme, the Scottish Government intend to bolster the Scottish Tribunal Service with a view to reducing complexity for users of the system and increasing efficiency/economies of scale. The Scottish Tribunals Bill is expected to be introduced in 2013.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>In Wales, a programme of reform is underway in response to the recommendations of the 2010 review of Welsh tribunals conducted by the Welsh Committee of the AJTC. Each of the devolved administrations is looking to build systems that separate appeal routes from initial decision makers, in line with the principles that led to the establishment of the First-tier and Upper Tribunal in the UK. We recognise there is still work to be done both to realise the benefits of independent, two-tier tribunals in each of the assemblies and to ensure cohesion across the UK. We will continue to work closely with each administration to support their reform programmes, drawing up formal protocols where necessary.</td>
</tr>
<tr>
<td>20</td>
<td>The Council’s programme of work:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1) The Council must formulate, in general terms, a programme of the work that the Council plans to undertake in carrying out its functions.</td>
<td>The MoJ’s strategic work programme for administrative justice and tribunals for 2013-2016 was published in December and was placed in the libraries of both Houses of Parliament. As with the AJTC’s programme of work, this will be kept under review and revised when appropriate. The three other advisory bodies listed at 20(3) will continue to exist and MoJ will consult and work with these bodies as appropriate according to the objectives set out in the strategic work programme.</td>
</tr>
<tr>
<td></td>
<td>(2) The Council must—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) keep the programme under review, and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) revise it when appropriate.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(3) In discharging its duties under sub-paragraphs (1) and (2), the Council must have regard to—</td>
<td></td>
</tr>
<tr>
<td>Paragraph in Schedule 7, TCE Act 2007</td>
<td>Description of AJTC function</td>
<td>How the function will be undertaken by MoJ following abolition of the AJTC</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>--------------------------------</td>
<td>---------------------------------------------------------------------</td>
</tr>
<tr>
<td>(a) the work of the Civil Justice Council,</td>
<td>(a) the work of the Civil Justice Council,</td>
<td>MoJ will report annually to Parliament on the administrative justice system and how we are meeting the objectives set out in the strategic work programme.</td>
</tr>
<tr>
<td>(b) the work of the Social Security Advisory Committee, and</td>
<td>(b) the work of the Social Security Advisory Committee, and</td>
<td>In its March 2012 report on the future oversight of the administrative justice system, the Public Administration Select Committee recommended that, in the interests of continuing transparency, the MoJ report annually to Parliament on the operation of the administrative justice system, including:</td>
</tr>
<tr>
<td>(c) the work of the Industrial Injuries Advisory Council.</td>
<td>(c) the work of the Industrial Injuries Advisory Council.</td>
<td>• Details of the resourcing of the Department's administrative justice function</td>
</tr>
<tr>
<td>21</td>
<td><strong>Annual reports:</strong></td>
<td>• Actions taken by Ministers and officials to improve the operation of the system</td>
</tr>
<tr>
<td></td>
<td>1) The Council must make an annual report on the proceedings of the Council to—</td>
<td>• Details of how the views of users of the administrative justice system have been sought and addressed</td>
</tr>
<tr>
<td></td>
<td>(a) the Lord Chancellor,</td>
<td>• Details of work undertaken with other Departments, devolved administrations and local government, to improve administrative justice for the citizen.</td>
</tr>
<tr>
<td></td>
<td>(b) the Scottish Ministers, and</td>
<td>Arrangements will be made to report to Parliament on the issues suggested by the Committee, building on the annual report and statistics already published by HMCTS.</td>
</tr>
<tr>
<td></td>
<td>(c) the Welsh Ministers.</td>
<td>Following the abolition of the AJTC, the interim non-statutory bodies to be established in Scotland and Wales will make their own arrangements for reporting to Scottish and Welsh Ministers.</td>
</tr>
<tr>
<td>2) The Scottish Committee must make an annual report to the Scottish Ministers on the proceedings of the Scottish Committee.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3) The Welsh Committee must make an annual report to the Welsh Ministers on the proceedings of the Welsh Committee.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4) The Lord Chancellor must lay before each House of Parliament a copy of any report made under sub-paragraph (1).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paragraph in Schedule 7, TCE Act 2007</td>
<td>Description of AJTC function</td>
<td>How the function will be undertaken by MoJ following abolition of the AJTC</td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>-------------------------------</td>
<td>---------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| (5)The Scottish Ministers must lay before the Scottish Parliament a copy of any report made under sub-paragraph (1) or (2).  
(6)The Welsh Ministers must lay before the National Assembly for Wales a copy of any report made under sub-paragraph (1) or (3). | 22 Right to attend proceedings:  
(1)A member of any of—  
(a)the Council,  
(b)the Scottish Committee, and  
(c)the Welsh Committee,  
may attend (as observer) proceedings of a listed tribunal or of a statutory inquiry. | 'The AJT C’s tribunal oversight functions including attendance at proceedings are no longer required due to the establishment of a unified tribunal system within HMCTS which is committed to providing timely and effective justice to users. The MoJ considers that the needs of users can be effectively monitored through liaison with jurisdictional user groups and other sources of user information, such as complaints. The Advisory Group will provide an expert and critical forum to examine the issues raised and explore options to address them.  
The unified tribunals service administered by HMCTS is now well established, with a robust governance framework and management structure to ensure that tribunals meet key performance measures. Complaint handling mechanisms ensure that concerns expressed by users are dealt with fairly and inform service development. A common approach to judicial training and the two tier tribunal structure provide effective safeguards against poor decision making by tribunals. There are also robust quality assurance arrangements established in the Planning Inspectorate (which holds statutory inquiries into a range of land use developments). |
| 24 Council to be consulted on rules for listed tribunals:  
1) The power of a Minister of the Crown, the Welsh Ministers or the Scottish Ministers to make, approve, confirm or concur in procedural rules for any listed tribunal. | The vast majority of rules for listed tribunals are made by the Tribunal Procedure Committee and as such the MoJ believes that this function performed by the AJTC is no longer necessary. Schedule 5 of the Tribunals, Courts and Enforcement Act 2007 contains provisions for appointments to the Tribunal Procedure Committee and which ensure that members have experience in practice in tribunals, or in advising persons involved in tribunal proceedings. This provides a sufficient and systematic way of |
<table>
<thead>
<tr>
<th>Paragraph in Schedule 7, TCE Act 2007</th>
<th>Description of AJTC function</th>
<th>How the function will be undertaken by MoJ following abolition of the AJTC</th>
</tr>
</thead>
<tbody>
<tr>
<td>tribunal is exercisable only after consultation with the Council. (2)Sub-paragraph (1) does not apply with respect to any procedural rules made or to be made for a listed tribunal by the Tribunal Procedure Committee.</td>
<td>bringing relevant expertise into the rule making body without the need for the AJTC to nominate a member.</td>
<td></td>
</tr>
</tbody>
</table>
Map of the administrative justice and tribunals system and its oversight

Summary:

The table below maps out the main constituent parts of the administrative justice and tribunals system and states how they are currently overseen and how the Government intends to oversee them following the proposed closure of the Administrative Justice and Tribunals Council (AJTC).

In its report on the draft Order that seeks to abolish the AJTC, the Secondary Legislation Scrutiny Committee recommended that “…as a minimum, 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 Group and the MOJ now and at 31 March 2013, the date proposed for the abolition of the AJTC.” This document responds to that recommendation and should give greater clarity to the Justice Committee in its scrutiny of the draft Order.

The AJTC currently:

1. keeps the administrative justice system under review;
2. considers ways to make the system accessible, fair and efficient;
3. advises the Lord Chancellor, the Scottish Ministers, the Welsh Ministers and the Senior President of Tribunals on the development of the system;
4. refers proposals for changes in the system to those persons; and
5. makes proposals for research into the system.

A full list of AJTC functions from Schedule 7 of the Tribunals, Courts and Enforcement Act 2007 and how they will be taken forward is also enclosed for the Justice Committee’s consideration.

Her Majesty’s Courts and Tribunals Service (HMCTS) provides the system of support, including infrastructure and resources, for the administration of the business of the courts in England and Wales and those tribunals throughout the United Kingdom, for which the Lord
Chancellor is responsible. The agency provides the support necessary to enable the judiciary, tribunal members and magistracy to exercise their judicial functions independently. As such, it is responsible for ensuring that its administration of the tribunals under its responsibility (including its support for an independent judiciary) supports a fair, efficient and accessible system. Accordingly, HMCTS takes steps to keep the system within its ambit under review.

The Ministry of Justice (MoJ) has responsibility for a number of different parts of the justice system, including most tribunals and the administrative justice system as a whole (although individual parts still remain outside of its remit). There has always been a need for the Department to maintain capability to implement policy changes. However, under the reform programme initiated by the review of tribunals carried out by Sir Andrew Leggatt in 2001 and given a legislative footing by the Tribunals, Courts and Enforcement Act 2007, the extent of the MoJ’s direct policy responsibility has grown and the case for an independent arms length body to keep a disparate system under review has diminished. Given the new challenges of driving improvements in the now-reformed system, the Government believes that more benefit will be drawn from taking a systems-wide overview of administrative justice and tribunals from within the Department, which will also implement improvements. The Government’s priorities for improving the system have been published in the Administrative Justice and Tribunals Strategic Work Programme (December 2012)

Civil servants within the MoJ are expected to act with integrity, honesty, impartiality and objectivity when assisting Ministers to formulate policies and administer public services. To support open policy making, the MoJ has established the Administrative Justice Advisory Group. This Group will provide user-focused advice on issues within the system and policy options that seek to address them, supporting the MoJ in its oversight of individual tribunals and the administrative justice system as a whole.
<table>
<thead>
<tr>
<th>Body</th>
<th>Appeals or Cases Heard/Decided</th>
<th>Current oversight</th>
<th>Oversight from April 2013 (assuming abolition of AJTC)</th>
</tr>
</thead>
</table>
| Administrative Court | • Judicial reviews on:  
  ▪ Immigration and Asylum  
  ▪ Police employment decisions  
  ▪ Parking and Traffic Appeals Service decisions  
  ▪ Road user charging adjudications  
  ▪ Schools Exclusion Panel decisions  
  ▪ Family Health Services Appeals Unit decisions  
  ▪ Reserve Forces Appeal decisions  
  ▪ Gangmasters Licensing decisions | • HMCTS (oversees administration of the court)  
 • MoJ (implements policy relating to the appeal systems, judicial review rights and the administration of the court) drawing upon the advice of the Administrative Justice Advisory Group  
 • AJTC (provides advice to the Government on how to make the administrative justice and tribunal system accessible, fair and efficient) | • HMCTS (oversees administration of the court)  
 • MoJ (develops and implements policy relating to appeal rights and the operation of the court), drawing upon the advice of the Administrative Justice Advisory Group |
| Administrative Appeals Chamber (UT) | • Some judicial review functions allocated from Administrative Court by order of the Lord Chief Justice  
 • Onward appeals from:  
  ▪ General Regulatory Chamber (First-tier Tribunal)  
  ▪ War Pensions & Armed Forces Compensation Chamber (First-tier Tribunal)  
  ▪ Social Entitlement Chamber (not Criminal Injuries Compensation and NHS charges in | • HMCTS (oversees the administration of the tribunal)  
 • MoJ (develops and implements policy relating to appeal rights and the administration of the tribunal) drawing upon the advice of the Administrative Justice Advisory Group  
 • Scottish Government (policy)  
 • Welsh Government (policy) | • HMCTS (oversees the administration of the tribunal)  
 • MoJ (develops and implements policy relating to appeal rights and the operation of the tribunal), drawing upon the advice of the Administrative Justice Advisory Group  
 • Scottish Government (policy) |

1 The Advisory Group provides user focused advice to the MoJ on policy options through formal meetings (twice yearly), targeted workshops and written consultations

2 The devolved administrations will have a policy role in any superior Court of Record where devolved issues are decided.
<table>
<thead>
<tr>
<th>Chamber (UT)</th>
<th>Functions</th>
<th>Overseeing Authority</th>
<th>Policy Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tax &amp; Chancery Chamber (UT)</strong></td>
<td>Some judicial review functions allocated from Administrative Court by order of the Lord Chief Justice</td>
<td>HMCTS (oversees the administration of the tribunal)</td>
<td>MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group</td>
</tr>
<tr>
<td></td>
<td>Financial Services and Markets (excluding NI)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Pensions Regulator</td>
<td>AJTC (provides advice on tribunal performance and policy)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Onward appeals from:</td>
<td>HMCTS (oversees the administration of the tribunal)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tax Chamber</td>
<td>MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group</td>
<td></td>
</tr>
<tr>
<td></td>
<td>General Regulatory Chamber (Charity jurisdictions only)</td>
<td>AJTC (provides advice on tribunal performance and policy)</td>
<td></td>
</tr>
<tr>
<td><strong>Immigration and Asylum Chamber (UT)</strong></td>
<td>Some judicial review functions allocated from Administrative Court by order of the Lord Chief Justice (‘fresh claims’ only at present, although the Crime &amp; Courts Bill includes provision to remove restrictions on further transfer of cases)</td>
<td>HMCTS (oversees the administration of the tribunal)</td>
<td>MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group</td>
</tr>
<tr>
<td></td>
<td>Onward appeals from:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>First-tier Tribunal (Immigration &amp; Asylum Chamber)</td>
<td>HMCTS (oversees the administration of the tribunal)</td>
<td></td>
</tr>
<tr>
<td><strong>Lands Chamber (UT)</strong></td>
<td>Disputed compensation in compulsory purchase and certain other types of land compensation cases</td>
<td>HMCTS (oversees the administration of the tribunal)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>applications to discharge or modify restrictions on</td>
<td>MoJ (tribunal/appeals policy – as above) drawing upon the advice of</td>
<td></td>
</tr>
</tbody>
</table>

AJTC 04-C

Scotland:
- Health, Education & Social Care Chamber (First-tier Tribunal)
- Traffic Commissioners Tribunals
- Transport (Scotland)
- Pension Appeals (Scotland)
- Mental Health Tribunal (Wales)
- Special Educational Needs Tribunal (Wales)
- Pension Appeals Tribunal (Northern Ireland (NI))

Northern Ireland Executive (policy)
AJTC (provides advice on tribunal performance and policy)

Welsh Government (policy)
Northern Ireland Executive (policy)

HMCTS (oversees the administration of the tribunal)
AJTC (provides advice on tribunal performance and policy)

HMCTS (oversees the administration of the tribunal)
MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group

HMCTS (oversees the administration of the tribunal)
MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group

HMCTS (oversees the administration of the tribunal)
MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group
| - High Court (England & Wales) - Court of Session Outer House (Scotland) - High Court (NI) | • Onward appeals from statutory tribunals & panels etc. | • HMCTS (oversees the administration of the court)  
• Scottish Court Service (oversees administration of the court)  
• MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group  
• AJTC (provides advice on tribunal performance and policy) | • HMCTS (oversees the administration of the tribunal)  
• MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group |
| --- | --- | --- | --- |
| **First-tier Tribunal (FtT) Chamber Structure** | **Including appeals on the following subjects:**  
• Information Rights  
• Consumer Credit  
• Estate Agents  
• Immigration Services  
• Charity Tribunal  
• Environment  
• Claims Management Services  
• Alternative Business Structures  
• Transport (Driving Standards Agency Appeals)  
• Gambling  
• Examination Board  
• Food  
• Local Government Standards in England | • HMCTS (oversees the administration of the tribunal)  
• MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group  
• AJTC (provides advice on tribunal performance and policy) | • HMCTS (oversees the administration of the tribunal)  
• MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group |
<table>
<thead>
<tr>
<th>Chamber (FtT)</th>
<th>Social Security &amp; Child Support (except NHS charges in Scotland)</th>
<th>Criminal Injuries Compensation</th>
<th>Asylum Support</th>
<th>HMCTS (oversees the administration of the tribunal)</th>
<th>MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group</th>
<th>AJTC (provides advice on tribunal performance and policy)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Entitlement Chamber (FtT)</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Immigration &amp; Asylum (FtT)</td>
<td>• Immigration &amp; Asylum</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax Chamber (FtT)</td>
<td>• Direct and Indirect taxation</td>
<td>• MPs' Expenses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health, Education &amp; Social Care Chamber (FtT)</td>
<td>• Mental Health</td>
<td>• Special Educational Needs &amp; Disability</td>
<td>• Care Standards</td>
<td>• Primary Health Lists</td>
<td>• Administrative Justice Advisory Group</td>
<td>• Administrative Justice Advisory Group</td>
</tr>
<tr>
<td>Group</td>
<td>Justice Advisory Group</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| AJTC (provides advice on tribunal performance and policy) | • AJTC (provides advice on tribunal performance and policy)  
• MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group  
• AJTC (provides advice on tribunal performance and policy) |
| Department of Health (Policy) | • HMCTS (oversees the administration of the tribunal)  
• MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group |
| Department of Education (Policy) | • HMCTS (oversees the administration of the tribunal)  
• MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group |

<table>
<thead>
<tr>
<th>War Pensions &amp; Armed Forces Compensation (FtT)</th>
<th>War Pensions &amp; Armed Forces Compensation</th>
</tr>
</thead>
</table>
| HMCTS (oversees the administration of the tribunal) | • HMCTS (oversees the administration of the tribunal)  
• MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group  
• AJTC (provides advice on tribunal performance and policy) |
| MoJ (tribunal/appeals policy) | • HMCTS (oversees the administration of the tribunal)  
• MoJ (tribunal/appeals policy)  
• AJTC (provides advice on tribunal performance and policy) |
| AJTC (provides advice on tribunal performance and policy) | • HMCTS (oversees the administration of the tribunal)  
• MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group |

<table>
<thead>
<tr>
<th>MoD tribunals</th>
<th>Reinstatement Committees</th>
</tr>
</thead>
</table>
| HMCTS (oversees the administration of the tribunal) | • HMCTS (oversees the administration of the tribunal)  
• MoD (tribunal/appeals policy)  
• AJTC (provides advice on tribunal performance and policy) |
| MoJ (tribunal/appeals policy) | • HMCTS (oversees the administration of the tribunal)  
• MoJ (liaises with MoD on tribunal/appeals policy) |
| AJTC (provides advice on tribunal performance and policy) | • HMCTS (oversees the administration of the tribunal)  
• MoJ (tribunal/appeals policy)  
• AJTC (provides advice on tribunal performance and policy) |

| Other HMCTS-administered appeal mechanisms | Gender Recognition Panel  
Proscribed Organisations Appeal Commission  
Special Immigration Appeals Commission  
Pathogens Access Appeals Commission  
Reserve Forces Appeal Tribunals |
|---|---|
| HMCTS (oversees the administration of the tribunal) | • HMCTS (oversees the administration of the tribunal)  
• MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group  
• AJTC (provides advice on tribunal performance and policy) |
| MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group | • HMCTS (oversees the administration of the tribunal)  
• MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group |

| Property Chamber | Adjudicator to HM Land Registry  
Agricultural Land Tribunal  
Residential Property Tribunal Service |
|---|---|
| DCLG (tribunal/appeals policy) | • DCLG (tribunal/appeals policy)  
• HMCTS (oversees the administration of the tribunal)  
• AJTC (provides advice on tribunal performance and policy) |
| MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group | • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group |

| Property Chamber | Adjudicator to HM Land Registry  
Agricultural Land Tribunal  
Residential Property Tribunal Service |
|---|---|
| DCLG (tribunal/appeals policy) | • DCLG (tribunal/appeals policy)  
• HMCTS (oversees the administration of the tribunal)  
• AJTC (provides advice on tribunal performance and policy) |
| MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group | • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group |
### Employment Tribunals (party vs. party tribunals administered by HMCTS)

<table>
<thead>
<tr>
<th>Employment Tribune</th>
<th>Umpires and Deputy Umpires (appeals from outside HMCTS reinstatement committee)</th>
<th>HMCTS (oversees the administration of the tribunal)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Employment Appeal Tribunal (England &amp; Wales)</td>
<td>Onward appeals from: Employment Tribunals</td>
<td>BIS (tribunal/appeals policy)</td>
</tr>
<tr>
<td>- Employment Appeal Tribunal (Scotland)</td>
<td></td>
<td>MoJ (liaises with BIS on tribunal/appeals policy) drawing upon the advice of the Administrative Justice Advisory Group</td>
</tr>
<tr>
<td>Employment Tribunal</td>
<td>Employment Tribunal (England &amp; Wales)</td>
<td>AJTC (provides advice on tribunal performance and policy)</td>
</tr>
<tr>
<td></td>
<td>Employment Tribunal (Scotland)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Gangmasters Licensing (legislation owned by DEFRA)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Reserve Forces Appeal Tribunals (legislation owned by MoD)</td>
<td></td>
</tr>
</tbody>
</table>

### Other UK Central Government Tribunals (not currently administered by HMCTS)

<table>
<thead>
<tr>
<th>Traffic tribunals</th>
<th>Parking and Traffic Appeals Service (Parking Adjudicators)</th>
<th>MoJ will take a light touch oversight role for these</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>DCLG (tribunal/appeals policy)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Local Authorities</td>
<td></td>
</tr>
</tbody>
</table>
| **AJTC 04-C**
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Road User Charging Adjudicator Tribunal</strong>&lt;br&gt;<strong>Traffic Commissioners</strong>&lt;br&gt;<strong>Penalty Charge Adjudicators (under Traffic Management Act 2004)</strong></td>
</tr>
<tr>
<td><strong>Employment – solicitors</strong>&lt;br&gt;<strong>Solicitors Disciplinary Tribunal</strong></td>
</tr>
<tr>
<td><strong>Employment - Police</strong>&lt;br&gt;<strong>Police Appeals Tribunal</strong>&lt;br&gt;<strong>Police Pensions Regulations Appeals Tribunal</strong></td>
</tr>
<tr>
<td><strong>Schools</strong>&lt;br&gt;<strong>Office of the School Adjudicator</strong>&lt;br&gt;<strong>School Admission Appeals Panels</strong>&lt;br&gt;<strong>School Exclusion Appeal Panels</strong></td>
</tr>
</tbody>
</table>

tribunals, liaising with the relevant administrators and ‘owning’ Departments. Live issues will be discussed with the Administrative Justice Advisory Group.

- All will be considered as part of the ongoing review of tribunals to be transferred into the HMCTS-administered system.
<table>
<thead>
<tr>
<th>Business</th>
<th>Health Services</th>
<th>Miscellaneous</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Copyright Tribunal</td>
<td>• NHS Litigation Authority Family Health Services</td>
<td>• Abolition of Aircraft &amp; Shipbuilding Industries</td>
</tr>
<tr>
<td>• Company Names Tribunal</td>
<td>Appeal Unit</td>
<td>Arbitration Tribunal (to be abolished)</td>
</tr>
<tr>
<td>• Competitions Appeal Tribunal</td>
<td></td>
<td>• Firefighters pension scheme tribunals</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Bus Lane Adjudicators</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Case Tribunals – Local Government Act 2000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Health and Safety Licence Appeals (DWP)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Mines and Quarries Tribunal (DWP)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Health Service Medicines (Price Control Appeals)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Tribunal (Department of Health)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Foreign Compensation Commission (Foreign &amp;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Commonwealth Office)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• BIS (policy)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Office of Fair Trading (policy)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Intellectual Property Office (performance)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• AJTC (provides advice on tribunal performance and policy)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• MoJ (policy - where cases are appealed onwards to the Administrative Court) drawing upon the advice of the Administrative Justice Advisory Group</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Department of Health (tribunal/appeals policy)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• AJTC (performance and policy)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• BIS (tribunal/appeals policy)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• DWP (tribunal/appeals policy)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• AJTC (provides advice on tribunal performance and policy)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Foreign &amp; Commonwealth Office (policy)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Devolved Appeals</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scottish Tribunals</td>
<td>Administrative operational support provided by the</td>
<td>The Scottish Tribunal Service (STS) operationally supports the tribunals noted. The STS is currently a delivery unit of the</td>
</tr>
<tr>
<td></td>
<td>Scottish Tribunals Service (STS):</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Additional Support Needs Tribunals for Scotland</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Lands Tribunal for Scotland</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The Scottish Government will continue to develop and implement policy relating to devolved jurisdictions.</td>
</tr>
<tr>
<td>Mental Health Tribunal for Scotland</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private Rented Housing Panel / Home Owner Housing Panel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scottish Charity Appeals Panel</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Other Devolved Jurisdictions:**
- Children’s Hearings
- Crofting Commission
- Education Appeal Committees
- Horse Racing Betting Levy Appeals Tribunal
- NHS Discipline Committee
- NHS National Appeal Panel for entry to the Pharmaceutical Lists
- NHS Tribunal for Scotland
- Police Appeal Tribunal
- Police Pensions Appeal Tribunal
- Scottish Parking Appeals Panel
- Valuation Appeals Committee
- Parole Board for Scotland

Justice Directorate of the Scottish Government.
- The Scottish Government develops and implements policy relating to devolved jurisdictions and has responsibility for the majority of the tribunal rules, however some rules are under the Lord President.
- The AJTC Scottish Committee currently must be consulted on any changes to the tribunal rules as listed on its schedule.

<p>| The Tribunals (Scotland) Bill is due to be introduced to the Scottish Parliament in this parliamentary session which will give the Lord President judicial leadership of tribunals judiciary (once they are transferred into the new system); will create a two tiered tribunals structure for Scotland; and will create the roles of President of Scottish Tribunals and Chamber Presidents who will have operational responsibility for tribunals within the new structure. |
| The Bill will also allow for the making of tribunal rules to be transferred to the newly created Civil Justice Council, which is under the leadership of the Lord President. |
| The Scottish Government has committed to creating an interim non-statutory advisory committee on administrative justice in Scotland; which will continue some of the |</p>
<table>
<thead>
<tr>
<th>Welsh Tribunals</th>
<th>Northern Ireland</th>
<th>functions of the AJTC Scottish Committee.</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Mental Health Review Tribunal for Wales</td>
<td>• The Appeals Service</td>
<td>• Welsh Government (tribunal/appeals policy)</td>
</tr>
<tr>
<td>• Valuation Tribunal for Wales (Ratings appeals heard in the Lands Chamber administered by HMCTS)</td>
<td>• The Care Tribunal</td>
<td>• AJTC Welsh Committee (provides advice on court performance and appeal policy)</td>
</tr>
<tr>
<td>• Special Educational Needs Tribunal for Wales</td>
<td>• The Charity Tribunal</td>
<td>(The Lord Chancellor makes rules for some of tribunals operating in Wales without having policy responsibility)</td>
</tr>
<tr>
<td>• Adjudication Panel for Wales</td>
<td>• Criminal Injuries Compensation Appeals Panel (NI)</td>
<td></td>
</tr>
<tr>
<td>• Agricultural Land Tribunal (Wales)</td>
<td>• The Lands Tribunal</td>
<td></td>
</tr>
<tr>
<td>• Forestry Committees for Wales</td>
<td>• Mental Health Review Tribunal</td>
<td></td>
</tr>
<tr>
<td>• Independent Review of Determination Panels</td>
<td>• NI Health and Safety Tribunal</td>
<td></td>
</tr>
<tr>
<td>• Independent Social Services Complaints Panels</td>
<td>• Northern Ireland Traffic Penalty Tribunal</td>
<td></td>
</tr>
<tr>
<td>• Local Health Boards in Wales</td>
<td>• Northern Ireland Valuation Tribunal</td>
<td></td>
</tr>
<tr>
<td>• Registered Nursery Education Inspectors Appeal Panels</td>
<td>• Northern Ireland Executive (policy)</td>
<td></td>
</tr>
<tr>
<td>• Registered School Inspectors Appeal Panels</td>
<td>• Courts Service and Tribunals Service (NI)</td>
<td></td>
</tr>
<tr>
<td>• Residential Property Tribunal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• School Admission Appeal Panels</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• School Exclusion Appeal Panels</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Traffic Penalty Tribunal adjudicators</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Northern Ireland Executive (policy)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Courts Service and Tribunals Service (NI)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Non-statutory Welsh Administrative Justice and Tribunals Committee (to oversee tribunal reform in Wales until 2015)</td>
<td></td>
</tr>
<tr>
<td><strong>Ombudsmen / Inquiries</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td><strong>Parliamentary &amp; Health Service Ombudsman (PHSO)</strong></td>
<td><strong>Covers UK Government Departments and other public organisations in the UK and the NHS in England only.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Local Government Ombudsman</strong></td>
<td><strong>Covers principal councils and certain other bodies in England</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Northern Ireland Ombudsman</strong></td>
<td><strong>Covers NI Government Departments and other public organisations</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Public Services Ombudsman for Wales</strong></td>
<td><strong>Covers public bodies and local authority members.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Scottish Public Services Ombudsman</strong></td>
<td><strong>Covers councils, housing associations, the NHS, the Scottish Executive and its agencies and departments, colleges and universities, and most</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Cabinet Office (policy - Parliamentary)</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Department of Health (policy – health services)</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>AJTC oversees the ombudsman landscape as a whole and its role within the wider administrative justice system</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>MoJ will continue to work closely with the PHSO, the Cabinet Office, and DoH to ensure coherence between ombudsmen and wider administrative justice policy</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>MoJ / HMCTS sits on the Cross-Government Complaints Forum</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>MoJ will oversee the ombudsman landscape as a whole and its role within the wider administrative justice system</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>The Ombudsman Association is represented on the Administrative Justice Advisory Group, which provides advice on how the</strong></td>
<td></td>
</tr>
</tbody>
</table>
## Public Authorities

**Other Ombudsmen**

- Prisons and Probation Ombudsman
- Children’s commissioners
- Financial Ombudsman Service
- Housing Ombudsman Service (HOS)
- Judicial Appointments and Conduct Ombudsman
- Legal Services Ombudsman
- Office of the Independent Adjudicator
- Police Ombudsman for Northern Ireland
- Pensions Ombudsman
- Prisoner Ombudsman for Northern Ireland
- Scottish Legal Services Ombudsman
- Information Commissioners
- Public Standards Commissioners

**Statutory Inquiries**

- Any inquiry or hearing held by or on behalf of a Minister of the Crown, the Scottish Ministers or the Welsh Ministers in pursuance of a statutory duty

AJTC - keeps under review, and reports on, the constitution and working of statutory inquiries. In practice AJTC’s role has been limited to planning inquiries.

- Planning Inspectorate (quality assurance for land use inquiries)

- Planning Inspectorate (The Quality Assurance Unit operates across all functions of the Planning Inspectorate to ensure appropriate standards and procedures are upheld. Recommends changes to the Planning Inspectorate’s Audit Committee, or the Inspectorate’s main board. Non-Executive Directors ensure external scrutiny.)
Title: Abolition of Administrative Justice and Tribunals Council (AJTC)

IA No: MoJ120

Lead department or agency: Ministry of Justice

Other departments or agencies:

Impact Assessment (IA)

Date: 14/11/2011
Stage: Final
Source of intervention: Domestic
Type of measure: Primary legislation
Contact for enquiries: Elinor Howard - 0207 334 3284

Summary: Intervention and Options

<table>
<thead>
<tr>
<th>Cost of Preferred (or more likely) Option</th>
<th>RPC Opinion:</th>
<th>RPC Opinion Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Net Present Value</td>
<td>Business Net Present Value</td>
<td>Net cost to business per year (EANCB on 2009 prices)</td>
</tr>
<tr>
<td>£11.7m</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>

What is the problem under consideration? Why is government intervention necessary?
In 2010 the government conducted a review of all Arm’s Length Bodies (ALBs) to ensure that all ALBs were transparent and accountable, provide essential value for money and effective services that are required to be carried out and funded by the State. In considering whether an ALB should be retained, bodies were assessed against three tests: Does the body perform a technical function? Does the body need to be politically impartial? Does the body act independently and transparently to establish facts? The Administrative Justice Tribunals Council (AJTC) was assessed to not have met any of these tests. Government intervention is required because legislation is needed to formally close the AJTC.

What are the policy objectives and the intended effects?
The objective is to provide services that are required and funded by the State in a transparent and accountable way, provide essential value for money, and provide effective services.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
Option 0: Do nothing (retain AJTC).
Option 1: Abolish AJTC and their function by an order under the Public Bodies Bill. This is the preferred option because the AJTC does not meet the key criteria set by the Government for retaining Arm’s Length Bodies. AJTC’s policy role overlaps with the Ministry of Justice’s (MoJ) and its oversight role duplicates controls in the Tribunals Service. Even though the quality of its advice has been sound, its cost is not justified by its added value, particularly given the change in the tribunal and policy landscape since its inception.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year

| Does implementation go beyond minimum EU requirements? | N/A |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | Micro No | < 20 No | Small No | Medium No | Large No |
| What is the CO₂ equivalent change in greenhouse gas emissions? (Million tonnes CO₂ equivalent) | Traded: NO | Non-traded: NO |

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: ____________________________ Date: 13 December 2011
### FULL ECONOMIC ASSESSMENT

<table>
<thead>
<tr>
<th>Price Base Year</th>
<th>PV Base Year</th>
<th>Time Period Years</th>
<th>Net Benefit (Present Value (PV)) (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>2012</td>
<td>10</td>
<td>Low:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>High:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Best Estimate: £11.7m</td>
</tr>
</tbody>
</table>

### COSTS (£m)

<table>
<thead>
<tr>
<th>Low:</th>
<th>High:</th>
<th>Best Estimate: £0.3m</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### BENEFITS (£m)

<table>
<thead>
<tr>
<th>Low:</th>
<th>High:</th>
<th>Best Estimate: £0.3m</th>
</tr>
</thead>
<tbody>
<tr>
<td>£0.3m</td>
<td>£1.4m</td>
<td>£11.9m</td>
</tr>
</tbody>
</table>

### Description and scale of key monetised costs by ‘main affected groups’

MOJ would incur possible lump sum redundancy costs of up to £0.3m if 3 permanent staff are not redeployed within the civil service. The extent of staff taking redundancy is unclear, compared to staff redeployment or early retirement, and an estimate is based on the assumption of redundancy.

### Other key non-monetised costs by ‘main affected groups’

Possible loss of income for AJTC staff if they are made redundant and unable to find positions elsewhere in the economy, however it is assumed that staff and council members would find positions elsewhere.

### BENEFITS (£m)

<table>
<thead>
<tr>
<th>Low:</th>
<th>High:</th>
<th>Best Estimate: £0.3m</th>
</tr>
</thead>
<tbody>
<tr>
<td>£0.3m</td>
<td>£1.4m</td>
<td>£11.9m</td>
</tr>
</tbody>
</table>

### Description and scale of key monetised benefits by ‘main affected groups’

On average MOJ would save approximately £1.4m per annum from pay and costs of AJTC operations. Savings from AJTC operations have been uprated with GDP. AJTC staff would receive one-off redundancy payments of up to £0.3m assuming they are not redeployed within the civil service. The extent of staff taking redundancy is unclear, compared to staff redeployment or early retirement, and a best estimate is based on the assumption of redundancy.

### Other key non-monetised benefits by ‘main affected groups’

Tribunal users, and users of administrative justice systems, may incur some loss from no longer being able to voice their concerns through AJTC.

### Key assumptions/sensitivities/risks

Discount rate (%): 3.5

Assumes staff receive voluntary redundancy. If staff are redeployed within the civil service there would be no additional pay and pension impacts. Alternatively, if staff receive early retirement, staff in total would receive a one-off payment of up to £0.2m and ongoing pension income of up to £0.06m per year. Assumes staff and members find positions elsewhere. Assumes AJTC closes on 30 September 2012. AJTC spending has been adjusted using the GDP deflators.

### BUSINESS ASSESSMENT (Option 1)

- Direct impact on business (Equivalent Annual) £m:
  - Costs: NA
  - Benefits: NA
  - Net: NA

- In scope of OIOO?: No
- Measure qualifies as: NA
### Annual profile of monetised costs and benefits (£m)

<table>
<thead>
<tr>
<th></th>
<th>Y0</th>
<th>Y1</th>
<th>Y2</th>
<th>Y3</th>
<th>Y4</th>
<th>Y5</th>
<th>Y6</th>
<th>Y7</th>
<th>Y8</th>
<th>Y9</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transition costs</td>
<td>0.3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual recurring costs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total annual costs</td>
<td>0.3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transition benefits</td>
<td>0.3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual recurring benefits</td>
<td>0.6</td>
<td>1.3</td>
<td>1.3</td>
<td>1.4</td>
<td>1.4</td>
<td>1.5</td>
<td>1.5</td>
<td>1.5</td>
<td>1.6</td>
<td>1.6</td>
</tr>
<tr>
<td>Total annual benefits</td>
<td>0.9</td>
<td>1.3</td>
<td>1.3</td>
<td>1.4</td>
<td>1.4</td>
<td>1.5</td>
<td>1.5</td>
<td>1.5</td>
<td>1.6</td>
<td>1.6</td>
</tr>
</tbody>
</table>

Base year 2012/13
Annual recurring benefits (AJTC operational savings) uprated with GDP deflators
Totals may not sum because of rounding
For non-monetised costs and benefits please see summary sheets and main evidence section
Evidence Base

1. Introduction

Background

1. The Administrative Justice Tribunals Council (AJTC) is an Advisory Non Departmental Public Body (NDPB) established under the Tribunals, Courts and Enforcement Act 2007 (TCE 2007), replacing, but with wider functions than, the Council on Tribunals which was established in 1958. It covers England, Wales and Scotland.

2. The AJTC keeps under review the administrative justice system as a whole with a view to making it accessible, fair and efficient. ‘Administrative justice’ includes the procedures for government making decisions that affect various aspects of peoples everyday lives, the law that regulates such decision-making, and the systems (such as the various tribunals and ombudsmen) that enable people to challenge these decisions. Administrative justice covers a wide range of areas, for example, decisions on benefits, such as disability living allowance; decisions on asylum applications; and decisions on school admissions and exclusions.

3. The AJTC seeks to ensure that the relationships between the courts, tribunals, ombudsmen and alternative dispute resolution providers satisfactorily reflect the needs of users. Its key functions are to keep under review the:
   - overall administrative justice system;
   - constitution and working of the tribunals designated as being under the AJTC’s oversight; and
   - constitution and working of statutory inquiries.

4. The AJTC currently operates with nine staff altogether.

Policy Proposal

5. In 2010 the Cabinet Office led a cross government review of all Arm’s Length Bodies (ALBs) in order to increase the transparency and accountability of public bodies and to reduce their number and cost. Cabinet Office worked with departments to agree which ALBs should be abolished, merged, modified or transferred, or whose constitutional arrangements should be reformed.

6. All ALBs have been assessed against three criteria:
   a. Does the body perform a technical function?
   b. Does the body need to be politically impartial?
   c. Does the body act independently and transparently to establish facts?

7. The Secretary of State for Justice assessed that the AJTC does not perform a technical function, has no requirement to be politically impartial and did not exercise an independent role in determining facts. Therefore, he concluded that the AJTC does not meet any of these three tests and decided to consult on the intention that the AJTC should be abolished.

8. The MOJ consulted on the intention to abolish the AJTC and the future oversight of administrative justice policy between July and October 2011 as part of a wider consultation on the proposals in the Public Bodies Bill. After considering the responses to that consultation, the Secretary of State for Justice has decided to abolish the AJTC by an Order under the Public Bodies Act.

9. The Secretary of State has decided that the functions of the AJTC are no longer required as they duplicate existing arrangements or are more properly performed by Government. Therefore the retention of the AJTC can no longer be justified against a background of severe financial constraints. MoJ already exercises oversight of the administrative justice system and the development of administrative justice policy. HMCTS already has oversight of HMCTS tribunals. MoJ and HMCTS will continue to exercise these functions after the closure of AJTC. MoJ will also develop oversight of remaining non-HMCTS tribunals and bodies, and will ensure users are at the heart of policy development.

10. There will be no impact on businesses from the closure of AJTC.
Economic Rationale

11. The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).

12. These proposals would be justified on the grounds of productive efficiency. The same functions can be carried out by MoJ directly but with the use of fewer resources.

2. Cost and Benefits

13. This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

14. The MOJ has been able to monetise some of the costs and benefits from closing the AJTC, mainly those associated with staff and operational costs. Some costs are not possible to quantify such as impacts on users and some of the functions that are taken within MoJ, although these are expected to be minor. A quantitative assessment would require specific data and information that is unknown and cannot be estimated with any degree of precision. However, a qualitative assessment of these costs and benefits is provided.

Affected stakeholder groups, organisations and sectors

15. Groups that are affected by the proposals are:

- MOJ;
- AJTC staff, AJTC Chairman, and members of the Council;
- Tribunal users, and users of administrative justice systems;
- Legal service providers and the justice system.

16. There will be no impacts on businesses.

Option 0: Base case (do nothing)

17. Under this option the AJTC would continue to function. Its annual running costs would continue to be at historic levels of around £1.2 million uprated for inflation. The £1.2 million annual running cost is based on AJTC’s 2010/11 allocation adjusted for the percentage under-spend in 2009/10. Some functions would continue to be carried out by the MOJ, HMCTS, and other government departments and the AJTC. These include oversight of MoJ Tribunals and the ongoing review of administrative justice policy.

Option 1: Abolish AJTC

Description

18. This option would be to abolish AJTC by an order made under the Public Bodies Bill. The AJTC’s ‘oversight’ functions, especially in relation to tribunals and statutory inquiries (in practice inquiries relating to land use), are no longer considered vital to public service delivery. The development of administrative justice policy is a government function so a separate source of advice from an advisory body is no longer necessary. The MOJ will continue to take a clear lead
in government on the development of administrative justice policy and will work proactively with
other government departments with responsibilities in this area to ensure a coherent and
consistent approach is taken in policy development.

19. There is an existing dedicated policy team within MoJ, with effective links to other government
departments, including the Cabinet Office, which leads on ombudsman policy. The team is well
placed to influence the development of policy from the outset, to ensure administrative justice is a
key part of the wider justice reform agenda, and to have oversight of the wider system.

Costs of Option 1

Costs to Ministry of Justice (MoJ)

20. AJTC currently operates with nine staff, six of which are permanent MoJ staff. MoJ will incur
redundancy or early retirement costs if permanent staff are not redeployed to other posts within
the civil service. It is likely that three of the permanent staff will be redeployed within the civil
service so it is assumed there will be no exit costs for these staff. The position is less certain for
the three remaining permanent staff, and the associated costs would depend on whether they are
redeployed, made redundant, or take early retirement. For the purpose of this IA, it is assumed
all three staff will be made redundant at a one-off cost to MoJ of £0.3 million in 2012/13. However,
if the staff were to receive early retirement, MoJ would incur a one-off cost of
£0.2 million in 2012/13 and ongoing pension costs of up to £60,000 per year until early retirees
reached 60 years of age. Alternatively, staff may be redeployed, in which case there would be no
additional costs to MoJ.

21. MoJ will incur some additional administrative costs from closing the AJTC. The MOJ has not
been able to monetise these but they are likely to be minimal.

22. It is assumed that the MOJ will take on a small amount of additional work from AJTC after it is
abolished. It is assumed that no additional staff will be hired, and therefore there is no extra
financial cost to the MOJ. However, any additional work undertaken by MoJ as a result of the
AJTC being abolished will represent a non-monetised economic cost in that resource would be
transferred from an alternative MoJ activity of less priority.

Costs to AJTC staff, the Chairman and members of the Council

23. Assuming AJTC staff are made redundant or take early retirement, they would incur a reduction
in income if they are unable to find alternative positions elsewhere in the economy with a similar
salary. Assuming three permanent staff will be made redundant and not able to find alternative
positions their loss in income would be approximately £0.2 million in total. However, any
reduction in income would be at least partly offset by the redundancy or early retirement
payments. The net impact on the staff from forgone income would depend on how long they
remain unemployed for. For example, it may be that staff would find alternative jobs immediately
after termination, in which case, they would continue to receive ongoing income, as well as a
redundancy payment, resulting in an overall benefit. It is not possible to quantify the extent of this
cost as the duration of unemployment for staff is unknown.

24. Members of AJTC collectively receive remuneration of approximately £0.3 million per annum.
They may incur a reduction in their income if they do not find alternative positions with a similar
level of remuneration.

Costs to tribunal users, and users of administrative justice systems

25. It is possible that tribunal users and users of administrative justice systems would lose an outlet
to voice their concerns. However, this impact is expected to be mitigated by the existence of
tribunal user groups within HMCTS which act as a forum for users to articulate concerns and
inform improvements that will meet customer needs. The MoJ Justice Policy Group is well placed
to provide oversight of the administrative justice system and work with colleagues within MOJ,
and other government departments, to consider users’ needs and views during policy
development and service delivery. Justice Policy Group officials are able to provide Ministers with
balanced and impartial advice, drawing on expert advice as required about the development of
administrative justice policy.
Legal service providers and the justice system

26. No impacts on case volumes or outcomes are expected.

Benefits of Option 1

Benefits to Ministry of Justice

27. The MOJ will benefit from no longer funding AJTC. It is assumed that annual running costs would continue to be at historic levels of around £1.2 million per annum, uprated for inflation. The £1.2 million cost is based on AJTC’s 2010/11 allocation, adjusted for the percentage under-spend in 2009/10. It is estimated that over the ten year appraisal period MoJ would save approximately £14.0 million.1

28. It is assumed there would be no additional savings to MoJ from reduced building rental costs. However there might be some savings in future and this would depend on lease conditions. MoJ currently rents an entire building where AJTC operates in part of it at a cost of approximately £0.1 million per annum. The lease is expected to expire in September 2013 and no rental savings will be realised before then. The level of savings after September 2013 will depend on whether MoJ would be able to sublet the AJTC’s part of the building.

Benefits to AJTC Staff, the Chairman and members of the Council

29. As set out above, it is assumed that three AJTC staff will be redeployed and no additional benefits will be incurred. As discussed above, another three AJTC staff are assumed to be made redundant and will receive redundancy one-off payments of up to £0.3 million in 2012/13. However, it may be that these staff receive early retirement instead. This would result in a one-off payment of up to £0.2 million, and ongoing pension payments of up to £60,000 per year in total until early retirees reached 60 years of age. Alternatively, it may be that all staff would be redeployed within the civil service. In this case, there would be no additional benefits. As discussed above, the extent to which redundancy payouts raise a benefit would depend on the time taken to find alternative positions.

Legal service providers and the justice system

30. No impacts on case volumes or outcomes are expected.

Benefits to wider economy and society

31. If AJTC duplicates some functions that MoJ and other government departments carry out with fewer resources, there may be efficiency gains for the wider UK economy.

Net Impact of Option 1 & Summary of Options

32. It is expected that the benefits of Option 1 outweigh the costs as some of the functions carried out by AJTC are replicated by other functions carried out in MoJ and other government departments. Furthermore, any costs to staff arising from redundancy might be offset depending on how long it would take to find alternative positions. It is expected that the overall outcome would increase efficiency within the economy.

33. Option 1 is preferred as it meets government objectives to increase the transparency and accountability of public bodies and to reduce their number and cost. The AJTC does not meet government’s criteria for the retention of ALBs.

---

1 This is the sum of benefits over the 10 year period, uprated with GDP. This figure has not been discounted.
Risks and Assumptions

34. For the purposes of quantifying impacts in this Impact Assessment, MoJ has made the following assumptions:

- A closure date of 30 September 2012 for the purposes of costing – this date could change and depends on when the Public Bodies Bill is approved by Parliament;
- A 2010/11 budget of £1.2 million based on AJTC’s 2010/11 allocation adjusted for the percentage under-spend in 2009/10;
- It is assumed that three staff will be redeployed, and another three staff will be made redundant with a one-off payout of up to £0.3 million in 2012/13. There is a possibility that some of these staff would receive early retirement instead of redundancy. In this case, there would be a one-off payment of up to £0.2 million and an ongoing pension of up to a combined total of £60,000 per year until early retirees reach 60 years of age. There is also a possibility that all staff would be redeployed, in which case there would be no additional costs or benefits;
- AJTC running costs and voluntary redundancy and early retirement payments have been uprated for inflation using HM Treasury’s GDP deflators;
- A ten year appraisal period running from 2012/13 to 2021/22 with 2012/13 as the base year; and
- The present values of costs and benefits have been calculating using a 3.5% discount factor.

35. Variations in the assumptions above will change the associated costs and benefits but are not expected to significantly change the net impact of the closure of AJTC.

36. It has been assumed that the Public Bodies Bill allows the Secretary of State to abolish certain public bodies through secondary legislation and that the government will abolish the AJTC after Royal Assent via secondary legislation.

37. It has been assumed that a separate advisory body is no longer necessary for the effective and efficient delivery of public services as the Secretary of State decided that the AJTC did not meet the three tests outlined in paragraph 6. It has also been assumed that any functions currently exercised by the AJTC will be carried out within existing MoJ/ Whitehall departments’ resources. No additional costs to the Courts, Probation, Prisons, Legal Aid and Crown Prosecution Service are anticipated.

3. One-In One-Out

38. Abolishing the AJTC is not a regulatory proposal and there are no business impacts. Therefore it is not within the scope of the One-In One-Out policy.

4. Enforcement and Implementation

39. The policy will be implemented by legislation. An order will be made under the Public Bodies Act to abolish the AJTC. Prior to abolition we will work together with the AJTC to effect an orderly closure, MoJ Justice Policy Group officials will discuss, with AJTC colleagues, how best to take forward work currently undertaken by the AJTC.

5. Specific Impact Tests

Equality Impact Assessment

40. The revised Equality Impact Assessment (EIA) is attached in Annex Two.
Competition Assessment

41. The impact is not significant on competition.

42. The proposal does not:
   - Directly limit the number or range of suppliers (or providers);
   - Indirectly limit the number or range of suppliers (e.g. by altering demand);
   - Limit the ability of suppliers to compete;
   - Limit suppliers’ incentives to compete vigorously.

Small Firms Impact Test

43. The impact is not significant on small firms as the AJTC is public sector focussed and most office supplies are provided to the AJTC through MoJ central contracts. The proposals do not impose additional costs on small business.

Carbon Assessment

44. The impact on the emission of Greenhouse Gases is negligible. There may be a small reduction in energy use as the office spaces in London and Edinburgh will not be used for AJTC work. People may have to travel more or less if they find alternative work but that is uncertain.

Other Environment

45. This is not broadly applicable as the policy will not:
   - lead to a change in the financial costs or environmental and health impacts of waste management;
   - impact significantly on air quality;
   - involve any material change to the appearance of the landscape or townscape;
   - change the degree of water pollution; levels of abstraction of water; exposure to flood risk;
   - disturb or enhance habitat or wildlife;
   - affect the number of people exposed to noise or the levels of exposure.

Health Impact Assessment

46. The policy will not have a significant impact on human health. In the short term, the policy may affect the health of those staff directly affected by the decision to close the AJTC, and may possibly affect the appointed part time members. Therefore there is unlikely to be a significant demand on health and social care services.

Human Rights

47. The policy is compliant with the Human Rights Act.

Justice Impact Test

48. There is no impact on Legal Aid or on the wider justice system (e.g. courts and tribunals, prisons and offender management).

Rural proofing

49. This policy is unlikely to have a different impact in rural areas, because the AJTC is not a direct provider of services to the public: it provides advice to ministers/ departments and officials.

Sustainable Development

50. The government has committed to five principles of sustainable development:
   - Living within environmental limits;
   - Ensuring a strong, healthy and just society;
• Achieving a sustainable economy;
• Promoting good governance;
• Using sound science responsibly.

51. This proposal supports the principles of ensuring a just society; achieving a sustainable economy and promoting good governance.
## Annex 1: Post Implementation Review (PIR) Plan

### Basis of the review:
We do not propose to have a formal review of the abolition of the AJTC. However, the MoJ and HMCTS will consistently keep oversight of the services it provides to users and the Justice Policy Group within MoJ will review the effectiveness of its oversight of the administrative justice system and the development of administrative justice policy.

### Review objective:
MoJ will not have a formal review, however in keeping an oversight on users, MoJ will consider the views of users and stakeholders as well as performance information to informally review whether the reform has been effective.

### Review approach and rationale:
We will meet regularly with users to ensure that HMCTS are responding to their concerns and with administrative justice stakeholders to ensure that their views inform the development of administrative justice policy.

### Baseline:

### Success criteria:
Satisfaction amongst tribunal users and input of stakeholders in the formation of administrative justice policy.

### Monitoring information arrangements:
HMCTS has a number of user groups in tribunal jurisdictions and has a good insight into the views of their users gathered through customer surveys.

### Reasons for not planning a review:
There are currently no plans for an internal review. The normal process would be for Select Committees to scrutinise the legislation within three to five years.
**Summary: Intervention and Options**

<table>
<thead>
<tr>
<th>Cost of Preferred (or more likely) Option</th>
<th>RPC Opinion: RPC Opinion Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Net Present Value: £5.0m</td>
<td>Business Net Present Value: NA</td>
</tr>
</tbody>
</table>

**What is the problem under consideration? Why is government intervention necessary?**

In 2010 the government conducted a review of all Arm’s Length Bodies (ALBs) to ensure that all ALBs were transparent and accountable, provide essential value for money and effective services that are required to be carried out and funded by the State. In considering whether an ALB should be retained, bodies were assessed against three tests: Does the body perform a technical function? Does the body need to be politically impartial? Does the body act independently and transparently to establish facts? The Administrative Justice and Tribunals Council (AJTC) was assessed to not have met any of these tests. Government intervention is required because legislation is needed to formally close the AJTC.

**What are the policy objectives and the intended effects?**

The objective is to provide services that are required and funded by the State in a transparent and accountable way, provide essential value for money, and provide effective services.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0: Do nothing (retain AJTC).

Option 1: Abolish the AJTC and their function by an order under the Public Bodies Act 2011. This is the preferred option because the AJTC does not meet the key criteria set by the Government for retaining Arm’s Length Bodies. The AJTC’s policy advisory role overlaps with the Ministry of Justice’s (MoJ) and its oversight role duplicates controls in Her Majesty’s Courts and Tribunals Service (HMCTS). Even though the quality of the AJTC’s advice has been sound, its cost is not justified by its added value, particularly given the change in the tribunal and policy landscape since its inception. This option included provisions for the Ministry to provide financial support, for two years, to the devolved administrations in Scotland and in Wales to provide continuity to the reform of their tribunal systems through non-statutory oversight bodies. This reflects the differing stages of development in tribunals across the different administrations in the UK.

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** Month/Year

<table>
<thead>
<tr>
<th>Does implementation go beyond minimum EU requirements?</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.</td>
<td>Micro No</td>
</tr>
<tr>
<td>Small No</td>
<td>Medium No</td>
</tr>
<tr>
<td>Traded: NQ</td>
<td>Non-traded: NQ</td>
</tr>
</tbody>
</table>

**What is the CO₂ equivalent change in greenhouse gas emissions?**

(Million tonnes CO₂ equivalent)

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: [Signature]

Date: 28 Jan 13
Summary: Analysis & Evidence

Policy Option 1

FULL ECONOMIC ASSESSMENT

<table>
<thead>
<tr>
<th>Price Base Year 2012</th>
<th>PV Base Year 2012</th>
<th>Time Period Years</th>
<th>Net Benefit (Present Value (PV)) (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Low:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>High:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Best Estimate:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COSTS (£m)</th>
<th>Total Transition (Constant Price)</th>
<th>Average Annual (excl. Transition) (Constant Price)</th>
<th>Total Cost (Present Value)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>High</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Best Estimate</td>
<td>£0.6m</td>
<td>£0.0m</td>
<td>£0.6m</td>
</tr>
</tbody>
</table>

Description and scale of key monetised costs by ‘main affected groups’
MoJ would incur possible lump sum redundancy costs of up to £0.3m in total if 3 permanent staff are not redeployed within the civil service. The extent of staff taking redundancy is unclear, compared to redeployment or early retirement, and this estimate is based on the assumption of redundancy. MoJ will also incur costs of £0.15m in both 13/14 and 14/15 to fund the Scottish and Welsh governments for the creation of interim non-statutory bodies to replace the AJTC in Scotland and Wales.

Other key non-monetised costs by ‘main affected groups’
Possible loss of income for AJTC staff if they are made redundant and unable to find equivalent employment soon enough elsewhere in the economy; however it is assumed that staff and council members would find employment elsewhere. If staff do not find alternative employment there may be costs to the state through unemployment benefits.

<table>
<thead>
<tr>
<th>BENEFITS (£m)</th>
<th>Total Transition (Constant Price)</th>
<th>Average Annual (excl. Transition) (Constant Price)</th>
<th>Total Benefit (Present Value)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>High</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Best Estimate</td>
<td>£0.3m</td>
<td>£0.7m</td>
<td>£5.6m</td>
</tr>
</tbody>
</table>

Description and scale of key monetised benefits by ‘main affected groups’
MoJ would save approximately £0.7m per annum from pay and costs of AJTC operations in real terms (in 12/13 prices). AJTC staff would receive one-off redundancy payments of up to £0.3m in total assuming they are not redeployed within the civil service. The extent of staff taking redundancy is unclear, compared to staff redeployment or early retirement, and the estimate used in this assessment is based on the assumption of three staff taking redundancy.

Other key non-monetised benefits by ‘main affected groups’
Staff that are made redundant may benefit if they are able to find better employment elsewhere soon enough.

Key assumptions/sensitivities/risks
Assumes staff receive voluntary redundancy. If staff are redeployed within the civil service there would be no additional pay and pension impacts. If staff receive early retirement, staff in total would receive a one-off payment of up to £0.2m and ongoing pension income of up to £0.06m per year. Assumes staff and members find employment elsewhere. Assumes AJTC closes on 31 March 2013. There will be no loss in administrative justice system case outcomes, system efficiency, or user experience.

BUSINESS ASSESSMENT (Option 1)

<table>
<thead>
<tr>
<th>Direct impact on business (Equivalent Annual) (£m):</th>
<th>In scope of OIOO?</th>
<th>Measure qualifies as</th>
</tr>
</thead>
<tbody>
<tr>
<td>Costs: NA</td>
<td>No</td>
<td>NA</td>
</tr>
<tr>
<td>Benefits: NA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net: NA</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Evidence Base - Notes

#### Annual profile of monetised costs and benefits (£m)

<table>
<thead>
<tr>
<th></th>
<th>£m, in nominal terms and rounded to the nearest £0.1m unless otherwise stated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0</td>
</tr>
<tr>
<td><strong>OPTION 0 - DO NOTHING (BASELINE)</strong></td>
<td></td>
</tr>
<tr>
<td>AJTC budget</td>
<td>0.7</td>
</tr>
<tr>
<td><strong>OPTION 1 - ABOLISH AJTC</strong></td>
<td></td>
</tr>
<tr>
<td>Costs</td>
<td></td>
</tr>
<tr>
<td>Redundancy costs for MoJ</td>
<td>0.0</td>
</tr>
<tr>
<td>Funding for Scotland and Wales</td>
<td>0.0</td>
</tr>
<tr>
<td>Total costs</td>
<td>0.0</td>
</tr>
<tr>
<td>Benefits</td>
<td></td>
</tr>
<tr>
<td>Redundancy benefit for staff</td>
<td>0.0</td>
</tr>
<tr>
<td>Saving from abolition (AJTC budget)</td>
<td>0.0</td>
</tr>
<tr>
<td>Total benefits</td>
<td>0.0</td>
</tr>
<tr>
<td>Net benefits</td>
<td></td>
</tr>
<tr>
<td></td>
<td>0.0</td>
</tr>
<tr>
<td>Net benefits (real terms, 12/13 prices)</td>
<td>0.0</td>
</tr>
<tr>
<td>Discounted net benefits</td>
<td>0.0</td>
</tr>
<tr>
<td>10 year NPV</td>
<td>5.0</td>
</tr>
</tbody>
</table>

AJTC budget uprated with GDP deflator measure of inflation
Total may not sum because of rounding
For non-monetised costs and benefits please see summary sheets and main evidence section
Evidence Base

1. Introduction

Background

1. The Administrative Justice and Tribunals Council (AJTC) is an Advisory Non Departmental Public Body (NDPB) established under the Tribunals, Courts and Enforcement Act 2007 (TCE 2007), replacing, but with wider functions than, the Council on Tribunals which was established in 1958. It covers England, Wales and Scotland.

2. The AJTC keeps under review the administrative justice system as a whole with a view to making it accessible, fair and efficient. ‘Administrative justice’ includes the procedures for government making decisions that affect various aspects of peoples everyday lives, the law that regulates such decision making, and the systems (such as the various tribunals and ombudsmen) that enable people to challenge these decisions. Administrative justice covers a wide range of areas, for example, decisions on benefits, such as disability living allowance; decisions on asylum applications; and decisions on school admissions and exclusions.

3. The AJTC seeks to ensure that the relationships between the courts, tribunals, ombudsmen and alternative dispute resolution providers satisfactorily reflect the needs of users. Its key functions are to keep under review the:
   - overall administrative justice system;
   - constitution and working of the tribunals designated as being under the AJTC’s oversight; and
   - constitution and working of statutory inquiries.

4. The AJTC currently operates with eight staff.

Policy Proposal

5. In 2010 the Cabinet Office led a cross government review of all Arm’s Length Bodies (ALBs) in order to increase the transparency and accountability of public bodies and to reduce their number and cost. Cabinet Office worked with departments to agree which ALBs should be abolished, merged, modified or transferred, or whose constitutional arrangements should be reformed.

6. All ALBs have been assessed against three criteria:
   a. Does the body perform a technical function?
   b. Does the body need to be politically impartial?
   c. Does the body act independently and transparently to establish facts?

7. The Secretary of State for Justice assessed that the AJTC does not perform a technical function, has no requirement to be politically impartial and did not exercise an independent role in determining facts. Therefore, he concluded that the AJTC does not meet any of these three tests and decided to consult on the intention that the AJTC should be abolished.

8. The MoJ consulted on the intention to abolish the AJTC and the future oversight of administrative justice policy between July and October 2011 as part of a wider consultation on the proposals in the Public Bodies Bill. After considering the responses to that consultation, the Secretary of State for Justice has decided to abolish the AJTC by an Order under the Public Bodies Act.

9. The Secretary of State has decided that the functions of the AJTC are no longer required as they duplicate existing arrangements or are more properly performed by Government. Therefore the retention of the AJTC can no longer be justified against a background of severe financial constraints. MoJ already exercises oversight of the administrative justice system and the development of administrative justice policy. HMCTS already has effective performance oversight of those tribunals that it administers. MoJ and HMCTS will continue to exercise these functions after the closure of the AJTC. MoJ will also develop oversight of remaining non-HMCTS tribunals and bodies, and will ensure users are at the heart of policy development. To this end the MoJ has established an Advisory Group formed of representatives from across a wide range of user-focused bodies to examine issues arising from users of the administrative justice and tribunals system and provide early testing of policy proposals. Following the abolition of the AJTC the MoJ will provide limited financial support, for two years, to the Scottish
Government and the Welsh Government in order to assist these devolved administrations in the development of their tribunal systems.

10. There will be no direct impact on businesses from the closure of the AJTC.

**Economic Rationale**

11. The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and redistributional reasons (e.g. to reallocate goods and services to the more needy groups in society).

12. These proposals would be justified on the grounds of productive efficiency. The same administrative justice outcomes can be achieved by MoJ directly but with the use of fewer resources.

**2. Cost and Benefits**

13. This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

14. The MoJ has been able to monetise the costs and benefits from closing the AJTC under the assumptions stated. There are some risks that are not possible to quantify although these are expected to be minor.

**Affected stakeholder groups, organisations and sectors**

15. Groups that are affected by the proposals are:

- MoJ
- AJTC staff, AJTC Chairman, and members of the Council;
- Tribunal users, and users of administrative justice systems;
- Legal services providers and the administrative justice system (e.g. Tribunals);
- Scottish Government;
- Welsh Government;
- Wider government

16. There will be no direct impacts on businesses.

**Option 0: Base case (do nothing)**

17. Under this option the AJTC would continue to function as it currently does. In a previous impact assessment for the abolition of the AJTC (published in 2011) an annual running cost of £1.2m was used to estimate potential savings. However, as with other public bodies, the AJTC’s budget allocation has recently been reduced and in 2012/13 the cost of operating the AJTC is expected to be around £0.7m. Part of this reduction in the AJTC’s cost is due to the decision to abolish the body which has lead to a reduced level of activity and a reduction in the number of serving Council Members.

18. If the AJTC were to be retained and operate fully, it is possible that it may cost more than £0.7m to operate, however, for the purposes of this Impact Assessment the cost of operating the body in 2012/13 (£0.7m) has been used to measure the savings from abolition.
Option 1: Abolish AJTC

Description

19. This option would be to abolish AJTC by an order made under the Public Bodies Act 2011. It is no longer considered vital to public service delivery for an arm’s length body (i.e. the AJTC) to hold ‘oversight’ functions, especially in relation to tribunals and statutory inquiries (in practice inquiries relating to land use). The development of administrative justice policy is properly a government function and one that can be delivered more effectively and efficiently from within the Ministry of Justice. Funding a standing body to provide advice is unnecessary, particularly given the imminent completion of major structural reform of the tribunal system into a unified, two-tier structure. The MoJ will continue to take a clear lead in government on the development of administrative justice policy and will work proactively with other government departments with responsibilities in this area to ensure that a coherent and consistent approach is adopted in policy development.

20. As part of this, there is an existing dedicated policy team within MoJ, with effective links to other government departments, including the Cabinet Office, which leads on ombudsman policy. The team is well placed to influence the development of policy from the outset, to ensure administrative justice is a key part of the wider justice reform agenda, and to have oversight of the wider system. This is illustrated by the recent publication, on 18 December, of the Administrative Justice and Tribunals: A Strategic Work Programme 2013-16:


Costs of Option 1

Costs to Ministry of Justice (MoJ)

21. The AJTC currently operates with eight staff; six of which are permanent MoJ staff. MoJ will incur redundancy or early retirement costs if permanent staff are not redeployed to other posts within the civil service. It is likely that three of the permanent staff will be redeployed within the civil service so it is assumed there will be no exit costs for these staff. The position is less certain for the three remaining permanent staff, and the associated costs would depend on whether they are redeployed, made redundant, or take early retirement. For the purpose of this Impact Assessment, it is assumed all three staff will be made redundant at a one-off total cost to MoJ of £0.3m in 2013/14. However, if the staff were to receive early retirement, MoJ would incur a one-off cost of £0.2 million in 2013/14 and ongoing pension costs of up to £60,000 per year in total for all three staff until early retirees reached 60 years of age. Alternatively, staff may be redeployed, in which case there would be no additional costs to MoJ.

22. Of the two non-permanent members of staff, one is on secondment from another government department and will return to their home department at no additional cost. The other is on a fixed term contract which will be terminated at no cost to MoJ.

23. MoJ will incur some short term costs associated with administrative justice oversight in Scotland and Wales following the AJTC’s closure. These costs will total £0.15m in each of 2013/14 and 2014/15 and are for reimbursements to the Scottish and Welsh governments for the creation of interim non-statutory bodies to replace the AJTC in Scotland and Wales.

24. MoJ will also incur some additional administrative costs from closing the AJTC. The MoJ has not been able to monetise these but they are likely to be minimal.

25. It is assumed that the MoJ undertake a small amount of additional work after the AJTC is abolished and this will include operating the Advisory Group mentioned previously. It is assumed that no additional staff will be hired, and therefore there is no extra financial cost to the MoJ. However, any additional work undertaken by MoJ as a result of the AJTC being abolished will represent a non-monetised economic cost in that resource would be transferred from an alternative MoJ activity of less priority.

Costs to AJTC staff, the Chairman and members of the Council
26. Assuming AJTC staff are made redundant or take early retirement, they would incur a reduction in income if they are unable to find equivalent employment elsewhere with a similar salary soon enough. Assuming three permanent staff are made redundant and not able to find equivalent employment soon enough their loss in income would be approximately £0.2 million in total. However, any reduction in income would be at least partly offset by the redundancy or early retirement payments. The net impact on the staff from forgone income would depend on how long they remain unemployed. For example, it may be that staff will find alternative employment immediately after termination, in which case, they will continue to receive ongoing income, as well as a redundancy payment, resulting in an overall benefit. It is not possible to quantify the extent of this cost as the duration of unemployment for staff is unknown.

27. There may also be a cost to the fixed term contractor as their contract will be terminated earlier than anticipated. This will arise if they are unable to find equivalent employment for the remainder of the anticipated contract period.

28. Members of the AJTC collectively receive remuneration of approximately £0.3m per annum on an annual retainer basis. They may incur a reduction in their income if they do not find alternative employment with a similar level of remuneration soon enough.

Costs to tribunal users, and users of administrative justice systems

29. Tribunal user groups within HMCTS act as fora for users to articulate concerns and suggest improvements that will meet customer needs. The MoJ Justice Policy Group is well placed to provide oversight of the administrative justice system and work with colleagues within MoJ, and other government departments, to consider users’ needs and views during policy development and service delivery. Justice Policy Group officials are able to provide Ministers with balanced and impartial advice, drawing on expert advice as required about the development of administrative justice policy. Such advice can be sought from the Advisory Group described in paragraph 9 supra.

Legal service providers and the administrative justice system (e.g. Tribunals)

30. No impacts on case volumes or outcomes are expected. It is assumed that there is no loss of efficiency in the administrative justice system and no adverse impacts on case outcomes and on the user experience.

Wider government

31. It is possible that there is a cost to wider government if staff that are made redundant are unable to find alternative employment soon enough and claim unemployment benefits.

Benefits of Option 1

Benefits to Ministry of Justice

32. The MoJ will benefit from no longer funding the AJTC. For the purposes of this Impact Assessment it is assumed that annual running costs would continue to be at the current level of around £0.7m per annum uprated for inflation, based on the AJTC’s 2012/13 projected expenditure. It is estimated that over the ten year appraisal period (from 2012/13) MoJ would save approximately £6.4m in nominal terms (this figure is net of the costs mentioned in paragraphs 21 to 23).

33. It is assumed there would be no additional savings to MoJ from reduced building rental costs. MoJ currently rents an entire building where the AJTC operates in a small part of it at a cost of approximately £0.1 million per annum. The lease is expected to expire in September 2013 and any savings from this will depend on MoJ’s overall estates plans.

Benefits to AJTC Staff, the Chairman and members of the Council

34. As set out above, it is assumed that three permanent AJTC staff and one secondee from another government department will be redeployed and no additional benefits will be incurred. Another three AJTC staff are assumed to be made redundant and will receive redundancy one-off payments of up to £0.3 million in total in 2013/14. However, these three staff receive might take early retirement instead. This would result in a one-off payment of up to £0.2 million in 2013/14, and ongoing pension payments of up to £60,000 per year in total for all three staff until early retirees reached 60 years of age. Alternatively, it may be that all staff would be redeployed within the civil service. In this case, there would be no additional benefits. As discussed above, the
extent to which redundancy payouts raise a benefit would depend on the time taken to find alternative employment.

35. If staff are able to find alternative jobs quickly after termination (i.e. before the time implied by the redundancy payments) they would continue to receive ongoing income, as well as a redundancy payments, resulting in an overall benefit. Similarly, the fixed term contractor may benefit if they are able to find alternative employment that is better remunerated for the remainder of their anticipated contract period.

Legal service providers and the administrative justice system (e.g. Tribunals)

36. No impacts on case volumes or outcomes are expected. It is assumed that there is no loss of efficiency in the administrative justice system and no adverse impacts on case outcomes and on the user experience.

Benefits to wider economy and society

37. If AJTC duplicates some functions that MoJ and other government departments carry out with fewer resources, there may be efficiency gains for the wider UK economy.

Net Impact of Option 1 & Summary of Options

38. It is expected that the benefits of Option 1 outweigh the costs as some of the functions carried out by the AJTC are replicated by other functions carried out in MoJ and other government departments. Furthermore, any costs to staff arising from redundancy or contract termination might be offset depending on how long it would take to find alternative employment. This would depend on how much these staff are paid in new jobs relative to their posts at the AJTC. It is expected that the overall outcome would increased efficiency within the economy.

39. Option 1 is preferred as it meets government objectives to increase the transparency and accountability of public bodies and to reduce their number and cost. The AJTC does not meet government’s criteria for the retention of ALBs.

Risks and Assumptions

40. For the purposes of quantifying impacts in this Impact Assessment, MoJ has made the following assumptions:

- A closure date of 31st March 2013;
- A 2012/13 budget of £0.7m. AJTC running costs have been uprated for inflation using HM Treasury’s GDP deflators to estimate savings in future years;
- It is assumed that three permanent staff and one seconder will be redeployed, and another three staff will be made redundant with a one-off payout of up to £0.3 million in 2013/14. This redundancy figure is an estimate based on long serving staff exiting the AJTC and the actual cost may potentially be lower than this level depending on the staff involved. There is a possibility that some of these staff would receive early retirement instead of redundancy. In this case, there would be a one-off payment of up to £0.2 million and an ongoing pension of up to a combined total of £60,000 per year until early retirees reach 60 years of age. There is also a possibility that all staff would be redeployed, in which case there would be no additional costs or benefits;
- It is assumed that the fixed term contract is terminated at no cost to MoJ.
- NPV calculations assume that the three redundant staff, the fixed term contractor and AJTC members are able to find equivalent employment soon enough.
- A ten year appraisal period running from 2012/13 to 2021/22 with 2012/13 as the base year; and;
- The present values of costs and benefits have been calculating using a 3.5% discount factor.

41. Variations in the assumptions above will change the associated costs and benefits but are not expected to significantly change the net impact of the closure of the AJTC.

42. The Public Bodies Act allows the Secretary of State to abolish certain public bodies through secondary legislation.
43. It has been assumed that a separate advisory body is no longer necessary for the effective and efficient delivery of public services as the Secretary of State decided that the AJTC did not meet the three tests outlined in paragraph 6. It has also been assumed that any functions currently exercised by the AJTC will be carried out within existing MoJ/Whitehall departments’ resources. No additional costs to the Courts, Probation, Prisons, Legal Aid and Crown Prosecution Service are anticipated.

3. One-In One-Out

44. Abolishing the AJTC is not a regulatory proposal and there are no direct impacts on business or voluntary organisation. Therefore it is not within the scope of the One-In One-Out policy.

4. Enforcement and Implementation

45. The policy will be implemented by legislation. An order will be made under the Public Bodies Act to abolish the AJTC. Prior to abolition we will work together with the AJTC to effect an orderly closure, MoJ Justice Policy Group officials are discussing, with AJTC colleagues, how best to take forward work currently undertaken by the AJTC that requires to be continued.
Proposed abolition of the AJTC

Introduction

1. This is the evidence of the AJTC in response to the Committee’s call for views on:

   i) the extent to which the Government has addressed concerns about the proposed abolition of the AJTC voiced by consultees and by the Public Administration Committee in the explanatory memorandum, impact assessment accompanying the draft Order and in the Administrative Justice and Tribunals Strategic Work Programme;

   ii) 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, will be satisfactory;

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

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

2. The issues which the Committee has raised - in particular the adequacy of resources and expertise within the Ministry of Justice and the accuracy of the cost savings estimates - need to be factually informed as far as possible. Unfortunately the MoJ has not felt able to provide us with the following factual information which we requested for this purpose:

   • the direct annual costs of the MoJ’s Administrative Justice, Court and Tribunal Fees and Coroners Policy team;
   • the number and grades of staff currently in this team;
   • a rough estimate of the proportion of time currently spent within the team on Administrative Justice issues;
   • a rough estimate of the proportion of time currently spent on Administrative Justice issues, excluding time spent on AJTC abolition and related issues;
   • the number and grades of staff working on Administrative Justice issues in predecessor teams in 2010;
   • the date on which the longest-serving member of the Administrative Justice, Court and Tribunal Fees and Coroners Policy team started to work on Administrative Justice issues.

3. This evidence is restricted to the issues raised by the Committee. In particular it does not in terms explore the rationale for the proposed abolition, nor address the merits of that intention. The AJTC’s views have been made clear on previous occasions, most recently in the Chairman’s open letter to the Minister at the Ministry of Justice at Annex A.

Summary of the main concerns expressed by consultees and by the Public Administration Select Committee
4. The Government response to the consultation exercise concerning abolition of the AJTC reported that:

“a majority of respondents...commented that the AJTC’s strength is that it is an independent organisation that exercises a UK wide overview of the administrative justice system. They felt that from this perspective it is able to represent the user and exercise a vital role in sharing best practice, mutual learning and collaborative working between courts, tribunals and ombudsmen. Concern was expressed about what arrangements would be made with regard to the oversight of tribunals that lie beyond the remit of HMCTS. Particular anxiety was expressed about what arrangements would be made in respect of the oversight of local authority-run school admission and exclusion panels; a role the AJTC currently exercises...Doubt was expressed by a number of respondents about the ability of [Justice Policy Group] officials to exercise oversight of the administrative justice system and also whether - at a time when resources are scarce - the Group would be adequately resourced for this task and whether it could provide Ministers with independent advice. The Welsh Government expressed the view that it did not appear that the position in Wales had been properly considered and taken into account. An organisation representing consumers in Scotland highlighted the complexity of the tribunals landscape in Scotland and the need for the UK and Scottish Governments to work together to ensure that appropriate arrangements are in place following the abolition of the Scottish Committee of the AJTC”.¹

5. The Public Administration Select Committee, in its report, pointed out that the AJTC is charged with keeping an “enormous system” under review.² It regarded the poor decision-making by public authorities leading to a high proportion of decisions being overturned on appeal as unacceptable, and described the role of the AJTC in providing an independent overview of the system as one of “vital national importance”.³ It agreed with the Government that responsibility for the development of policy in relation to administrative justice properly lies with the MoJ, but did not agree that this is a function currently duplicated by the AJTC. It considered that oversight of the system by an entity independent from government is valuable and should be continued in some form. It further recommended 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.

Proposed post-abolition arrangements

6. The benefits of independent scrutiny are well-established in other areas of public life – health services, police, social security etc. The administrative justice system is

¹ MoJ: Response to consultation on reforms proposed in the Public Bodies Bill, paras. 4 - 6
² PASC: Future oversight of administrative justice: the proposed abolition of the AJTC, summary, para. 2
³ PASC report, summary, para. 4
concerned both with the quality of official decision-making affecting almost every citizen and with access to justice where mistaken decisions may have been made. Over a million appeals or challenges are made each year to tribunals, ombudsmen and other official forms of dispute-resolution. Surprisingly high proportions of these are successful. The system faces major challenges, with considerable scope for improvements to accessibility, fairness and efficiency.

7. We welcome the view expressed by PASC that an independent overview should be retained for this vast and important system, which is effectively monopolistic by its nature and in which users need a distinctive voice. The overview must be independent because administrative justice 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. Moreover, as a matter of constitutional principle and justice, the executive cannot exercise oversight over the judiciary. Ministers and policy officials (not just in the MoJ) should benefit from expert and arms-length views to enable them to take and implement high-quality decisions. An expert and dedicated Arm’s Length Body is more likely to stimulate and engage in innovatory thinking, and be able to identify and help engender good practice, than a government body reviewing its own conduct. We do not believe that the arrangements proposed by the MoJ to succeed the AJTC could ever constitute independent overview of this kind.

8. **Capacity of the MoJ to exercise oversight of the system** – In our view, an MoJ team could not in principle or practice act independently, in that it would lack the freedom to select issues to investigate. A government department is hampered in its ability to engage with a wide range of organisations, whilst its officials are not able constitutionally to speak out freely. The MoJ’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. It has little contact with Ombudsmen or tribunals outside the HMCTS framework – e.g. schools admissions and exclusions. It would not be able to spot and respond quickly and distinctively to emerging issues, such as the appeal arrangements connected with changes to Council Tax benefit⁴. The MoJ would not (and should not) have the AJTC’s statutory visiting rights. As an England and Wales only body it would lack the insights, experience and contacts to deal with a range of important pan-GB issues (which will assume greater importance as devolution moves even more to the centre-stage in the wake of the 2014 Referendum). The AJTC’s Welsh and Scottish Committees intend to submit their own evidence to the Justice Committee and will comment on the proposed new arrangements, which are still the subject of ongoing discussion. Although it is intended to establish non-statutory bodies in Scotland and Wales this will mean that within Great Britain there is coverage of the administrative justice field, except in England. There may arguably also be no coverage of reserved issues in the devolved areas. The absence of a pan-GB perspective is potentially significant to the effect that in that vacuum the different administrations develop different approaches. Differential approaches may impact on reserved areas also and have a disintegrating effect. That is unlikely to be a planned process and in relation to GB-wide

⁴ [http://ajtc.justice.gov.uk/docs/CLG_Committee_Submission.pdf](http://ajtc.justice.gov.uk/docs/CLG_Committee_Submission.pdf)
systems is unlikely to be in the interests of users across Great Britain as a whole. In short, MoJ would lack “the respect and influence that the AJTC has accumulated”\(^5\).

9. **Role and membership of the Administrative Justice Advisory Group** - We do not consider that arrangements for this new Group are at all satisfactory and we are concerned that its creation may be no more than a cosmetic exercise, with no certainty that its existence will survive for long after the abolition process is complete. We have had no opportunity to comment on its Terms of Reference, which we saw for the first time only when they were published by the House of Lords’ Secondary Legislation Scrutiny Committee. The fact that they appeared so late after the Group first met, and then only in response to a request from the Scrutiny Committee, does not inspire confidence about the Group’s future.

10. We cannot see how the Group can operate effectively. It has no status, standing or budget of its own; it lacks a chairman and secretariat; it is dependent upon MoJ policy staff; and, with only two meetings a year, it cannot exercise any sort of realistic, sustained oversight; and neither will it be able to identify issues, gather or refer to empirical evidence, develop any sort of collegiate identity or form coherent and cohesive views. It will have no accountability, with not even a requirement for an annual report or a website, such that its work will not be in the public domain. It will not be able to initiate its own work, act proactively in completing it or speak independently about it. The Group’s Terms of Reference will also limit its effectiveness, as they do not include a right to be consulted by other government departments or any other body, unlike the AJTC at present. Unlike the AJTC, the current members have not been appointed on merit after open competition and were not required to have knowledge of the administrative justice system or related expertise as conditions of appointment. Those of its members who are drawn from sectoral organisations will inevitably focus on priorities for their particular sector - not the administrative justice system as a whole, and let alone its overall accessibility, fairness and efficiency.

11. **Administrative Justice and Tribunals: MoJ Strategic Work Programme 2013-16** - We observe that this strategic work programme was published almost two and half years after the decision to seek the abolition of the AJTC was taken, and yet it still lacks specific proposals in support of its various headings. We are concerned by the statement that these “specific proposals will be developed in the coming months”\(^6\) and thus that these will not be available to Parliament for consideration during the scrutiny period for the draft abolition Order. The Committee may wish to ask the MoJ publish its specific proposals for work to be undertaken in support of the various headings in the Strategic work Programme, preferably before Parliamentary debates take place.

\(^5\) Secondary Legislation Scrutiny Committee: Report into the draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013, para. 18

\(^6\) MoJ Strategic Work Programme, para. 86
12. In general, the Strategic Work Programme is surprisingly brief and vague, in part because it fails to exploit or build directly on the extensive evidence and advice that has been generated by both the AJTC and by leading academic commentators on administrative justice in the decade since the Leggatt report and the 2004 White Paper. It is surprising and disappointing, for example, that there is no reference to the AJTC’s 2010 widely-welcomed ‘Principles of Administrative Justice’, to the detailed proposals set out in 2011 in ‘Right First Time’ or to the call for new thinking on Proportionate Dispute Resolution as set out in 2012 in ‘Putting it Right’. The Work Programme also needs to be clearer about how – without institutional know-how or a visits programme - MoJ will gather information on, understand and address user needs and experiences. More specifically, the Programme omits a number of important administrative justice issues, such as

- the impact on administrative justice of current legal aid and advice service changes;
- the growth of self representation and unadvised appellants;
- the need for meaningful measures of user satisfaction;
- the role of ombudsmen, and the interface between them and courts and tribunals;
- the constitutional and practical implications of greater devolution to Scotland and Wales.

The Committee may find it helpful to see the AJTC’s own draft Strategic Plan for 2013-16 at Annex B.

13. The role of HMCTS - We continue to question the assertion made in the explanatory memorandum and elsewhere that HMCTS governance arrangements effectively render aspects of the AJTC’s work redundant. The benefits of independent scrutiny have already been mentioned. More specifically, we have long been concerned that the work of tribunals would become less transparent in an agency also supporting the courts, and this concern has in our view been borne out by the HMCTS key performance indicators and the lack of detail in the HMCTS annual report. There were around 70 tribunal jurisdictions at the start of the courts and tribunal services unification process and the majority of these continue to exist, and yet the only performance measure for tribunals now contained in HMCTS’ annual report relates to the waiting times in the largest four of these jurisdictions alone. There is also no narrative in the annual report supporting the MoJ’s previous assertions that:

“almost all tribunal jurisdictions within HMCTS have user groups to enable users to discuss issues of concern with the judiciary and HMCTS management. There have also been regular customer surveys and a web-based system to gather feedback and provide insight into performance and customer service”.

7 Transforming Public Services: Complaints, Redress and Tribunals July 2004
8 MoJ: Consultation on reforms proposed in the Public Bodies Bill, para. 14
14. We are also unclear how the Government intends to fulfil its commitment to report more fully to Parliament on the operation of the administrative justice system and on its work to improve the quality of initial government decision-making. We note that one of the five key HMCTS strategic objectives is that it should “work with government departments and agencies, as appropriate, to improve the quality and timeliness of their decision making in order to reduce the number of cases coming before courts and tribunals”. Whilst we are aware that some work is underway in HMCTS in support of this objective, we consider that it should be clearly supported in the business priorities that appear in the HMCTS Action Plan, and that progress against it should be noted in future HMCTS annual reports, together with an account of current HMCTS work to improve upon its own performance and customer service provision for tribunal users.

15. **Resources and expertise within MoJ** - Resources within the MoJ for administrative justice remain very limited compared to those for criminal and civil justice, and reflect the relative priority the subject area is given. We note that the Civil and Family Justice Councils have been retained while the Government seeks to abolish the AJTC. In our view 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; and it is worth noting that staff in Arms-Length Bodies tend to stay in post longer than civil servants based in central headquarters. Civil servants do not tend to have particular know-how or training to review arrangements from a distinctive user perspective. The experience and expertise of the AJTC members and secretariat has however hitherto been available as a resource for generalist officials.

16. **The Government’s cost savings estimate** – As the Lords Secondary Legislation Scrutiny Committee has noted, the latest government estimate of the net cumulative savings to be made through abolition of the AJTC in the current Spending Review period is £0.8m. This is a significant reduction on the estimate first given by the Government. We continue to question whether this is an accurate or meaningful figure since it takes no account of the costs of increased staffing within the MoJ which have already built up since 2010. In that respect, the MoJ consultation document refers to “a dedicated team of civil servants within the department’s Justice Policy Group [who] are responsible for offering independent advice on strategic administrative justice policy”. In oral evidence, PASC was told of a team of 12 staff already being in place, and it is our understanding

---

9 “Arrangements will be made to report to Parliament on the issues suggested by the Committee, building on the annual report and statistics already published by HMCTS” - Government response to the PASC report, page 10

10 HMCTS Framework Document

11 SLSC Report, para. 19

12 MoJ Consultation on reforms proposed in the Public Bodies Bill, para.34
that this was a new team. As noted above, however, AJTC does not have factual information about the size, nature or cost of this team.

17. Meanwhile, the updated MoJ impact assessment states that:

“it is assumed that the MoJ [will] undertake a small amount of additional work after the AJTC is abolished and this will include operating the Advisory Group…It is assumed that no additional staff will be hired, and therefore there [will be] no extra financial cost to the MoJ. However, any additional work undertaken by MoJ as a result of the AJTC being abolished will represent a non-monetised economic cost, in that resource would be transferred from an alternative MoJ activity of less priority.”

We understand that MoJ Justice Policy Group staff are a flexible resource but we regard it as unrealistic not to include any part of the MoJ 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. Even within a fixed total departmental budget, the decision to increase the in-house MoJ spend on Administrative Justice policy in anticipation of the abolition of the AJTC is clearly at least an opportunity cost to MoJ – the money cannot be spent on something else. It is even more concerning that a significant part of the MoJ resource has had to be spent over the last two years on issues related directly to AJTC abolition.

Conclusions

18. We welcome this inquiry by the Justice Committee. The prospect of abolition has now hung over the head of the AJTC since July 2010. This period has brought much distraction and associated uncertainty and a significant reduction in human and financial resources. Despite this, and at very modest cost, we are proud of work that we have done to scrutinise the administrative justice system and propose substantial improvements. During this time we have fulfilled our Strategic Work Programme 2010-13, including a series of major studies on different aspects of the system and responses to a stream of governmental initiatives.

19. Nevertheless, there remains a great deal of unfinished business, not least in seeking to maintain and improve the quality of justice as the system comes under all the pressures of an era of austerity.

20. If Parliament resolves to approve the governmental intention to abolish the AJTC, there will no longer be a statutory body to provide independent oversight. In such circumstances, the Justice Committee may feel the need to look more closely at administrative justice issues. We conclude by suggesting in particular that, in the event of AJTC’s abolition, the Justice Committee may wish to:

- ensure the adequacy of the arrangements which the Government puts in place to fulfil the PASC recommendation that “the MoJ should, in the interests of continuing transparency, report annually to Parliament on the operation of the administrative justice system”;14

13 At para. 25

14 PASC report summary, para. 8
• play a role, alongside PASC, in scrutinising these annual reports;
• invite the Administrative Justice Advisory Group (which will not otherwise have any reporting obligations) to give evidence on a regular basis;
• undertake a future inquiry on the impact upon the unified tribunal system of the abolition of the (separate) Tribunals Service and creation of HMCTS; and
• invite HMCTS to share progress on its strategic objective of improving the quality and timeliness of decision-making by government departments and agencies in order to reduce the number of cases coming before tribunals.

February 2013
Dear Minister,

Administrative Justice & Tribunals Council

Open Letter

I am very pleased to have this opportunity to repeat my congratulations and those of the members of my Council on your appointment. We are delighted that administrative justice is explicitly one of a number of aspects of the justice system within your area of responsibility.

You – and Parliament - will soon have to take an early and potentially controversial decision about the future of the AJTC. It will not surprise you that my overall aim in writing this open letter is to convince you that it would make good sense to defer your decision for the moment. This letter largely repeats points made in my letters to you of 10th September and 8th November and when we met on 6th September.

Let me start by summarising the key points I wish to make in this letter.

• There are currently unprecedented challenges facing Administrative Justice
• AJTC has a solid track-record of helping to improve the system
• There are tangible benefits in retaining the AJTC
• There would be significant problems in abolishing the Council
• The benefits of abolition are illusory
• There are more sensible and constructive ways forward.
Challenges facing Administrative Justice

I am confident that, not least from your days in practice, you are very much aware of the challenges facing Administrative Justice at the moment. I never lose any occasion to remind everyone of the importance of this system. My predecessor, the sadly-missed Lord Tony Newton, spoke often of the dichotomy of its significance for ordinary citizens and its Cinderella status in legal and political circles. More recently, the Public Administration Select Committee said in its Report earlier this year: “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.”

The system is noteworthy for the very high volumes of cases which bring people into contact with both public administration and the machinery of justice. I have previously described the Administrative Justice system as a pyramid or iceberg. At its base, the number of decisions affecting individuals is huge. Many of these decisions may be wrong or open to challenge, but the majority of grievances do not proceed all the way up to a formal system. Nevertheless we know that, just at the tip of the iceberg, there are over one million cases a year proceeding to a tribunal, ombudsman or other dispute resolution scheme.

In the years ahead, increased volume demands may make the system very creaky indeed. In particular, we can anticipate considerable additional demand being driven by the introduction of new benefits - Universal Credit and Personal Independence Payment by changes to Housing and Council Tax Benefits and by other welfare reforms. At the same time, imposing fees on appellants (both to recover costs and to manage demand) takes everyone into difficult and controversial territory at policy and operational levels. Fees have already been introduced for many immigration appeals; they are on their way in employment tribunals; and just this week the Lord Chancellor has announced the intention of increasing fees for Judicial Review applicants.

The austerity programme presents major challenges across the system. There have been impressive productivity improvements within HMCTS which we welcome, but we have worries as cuts hit staff numbers and tribunal venues. More immediate and acute will be the impact of cuts to legal aid and the funding of advice services. This will not only increase the number of self-represented appellants. It will also seriously reduce the numbers who get advice before lodging an appeal or attending a hearing. This will remove a useful filter which weeds out unmeritorious cases and will increase the number who are entirely unprepared. This will mean more appeals, more adjournments, longer hearings, more delay and ultimately more cost.

When we met earlier in the month, I emphasised the ability of the AJTC to keep the whole the system under review and identify the knock-on effects from one part of the system to another. A major challenge remains to make all parts of the system inter-act better together. We have paid special attention in recent years to original decision-making in a wide range of public bodies. Too many mistakes need recourse to justice for a remedy – and this goes much wider than Sir Richard Branson having to use Judicial Review to expose basic mistakes inside the Department of Transport. At the level of ordinary citizens, PASC endorsed our
concerns about poor quality of decision-making which manifests itself in high
volumes of successful appeals. This can indicate mistakes, mistakes which are not
put right and unacceptable ways of dealing with people. There has been
considerable concern in the last couple of years, for example, about the handling of
Work Capability Assessments for those claiming Employment and Support
Allowance (ESA) or being transferred from Incapacity Benefit to ESA. Criticisms of
both Atos and DWP officials, which have been voiced by Professor Malcolm
Harrington, the National Audit Office, the Public Accounts Committee and others
have been echoed in our own observations at tribunals and in our reports. Just last
week, I observed a SSCS case involving a long-term heroin addict with physical
and mental problems - which were manifestly obvious to the tribunal - who had
been assessed by an Atos nurse as effectively free of symptoms.

Different types of challenge are presented by the pressures of devolution. I expand
on this aspect below. For now, I give only one example: the intention announced by
the last Lord Chancellor to unify the courts and tribunal judiciary under the
leadership of the Lord Chief Justice presents very real “cross-border” challenges. In
our view, that intention can and should only be carried forward after resolving the
nature and extent of tribunal devolution in Scotland.

My final point here puts some of these challenges into a more political context. The
language of Coalition priorities is welcome as a response to the sorts of problems
which I have outlined. Ministers talk of the “fairness” agenda and “governing for the
many, not the few”. There is much talk of reforming public services and making sure
that users are seen as paramount when designing and delivering services. Against
this background, it would seem very strange to abolish the AJTC - one of the few
public bodies focused on improving public services from the user perspective - and
to claim that its functions should be performed inside government, which is not only
the monopolistic provider of the services but also the “opponent” when the citizen
claims that a mistake has been made. Nobody would suggest that banks should be
given the task of improving redress schemes for consumers in dispute with banks.

**AJTC’s track-record**

When we met earlier this month, I was encouraged that you were aware of the solid
track-record which has been established over the years by the AJTC and its
predecessor, the Council on Tribunals. I am proud of what we have done,
especially in the last few years with very limited resources and under the threat of
abolition.

The original Council was established in 1958 by Harold Macmillan’s government –
perhaps one the first Conservative quangos – and both Councils have made a
constructive input since. We played a major role in stimulating and progressing the
Leggatt Review and the reforms of the 2007 Act which followed. Leggatt identified
the crucial connections between the different part of the system and envisaged
AJTC as the “hub as the centre of the administrative justice wheel.”

To highlight in chronological order some of our other contributions which have had
concrete impact:
1970 – CoT made the case for a more coherent structure for the main UK tribunals

1991 – Model Rules for Tribunals

2002 – Framework of Standards for Tribunals

2002 – Making Tribunals Accessible to Disabled People

2003 – Guide to Tribunal Rules

2009 – Administrative Justice Principles

2011 – Right First Time

2011 – Patients’ experiences of the First-tier Tribunal (Mental Health). (I have already told you about our impact on judicial training and other aspects of this previously-neglected jurisdiction and sent you the new HMCTS information sheet for patients appearing before a Mental Health Tribunal, which was produced as a direct result of our report.)

2012 – Putting it Right (Proportionate Dispute Resolution)

2012 – Guidance on Schools Admissions and Exclusions Appeals

2013 (forthcoming) - Research Agenda

As part of our track-record, it also worth highlighting the value of our statutory rights to visit and observe all aspects of tribunal hearings. This gives us real insights, which we pass on to the key players, about what is really happening “at the coalface”. Just yesterday, our Council meeting heard about two new areas of concern – a tribunal which reserved all decisions until after hearing six similar, but not identical, cases and another tribunal which (because of the need to compress each hearing into a 30 minute slot) did not tell appellants of its decision face to face – only in a short template letter issued some days later.

Benefits of retaining AJTC

Let me turn now to some of the main benefits of retaining the AJTC. I hardly need to remind that you that the 2007 Act establishes the Council as a statutory, independent body charged with keeping the administrative justice system under review and putting forward proposals for reform. I stress that our advice is directed primarily at the Secretary of State – in practice to you as the Minister responsible for administrative justice. We are there as a resource and an asset for you and your officials.

We believe that we are (and are widely seen to be) expert, well-connected, user-focused and credible. We have enjoyed and made good use of our standing as a neutral body, bringing together many diverse stakeholders, not least at our annual
conferences. A further advantage of being a permanent and dedicated body, with very low turnover of Council and Secretariat members, is that we have a long corporate memory. As a ‘critical friend’, our independence makes it easier to develop innovatory thinking and challenge vested interests. And I have already mentioned our span across the whole of Great Britain.

In short, we believe that we remain well-placed to assist MoJ, alerting you to key issues and emerging problems and helping to find worthwhile, workable and acceptable solutions. It is ironic, but welcome, that the MoJ strategic work programme is likely to reflect significant AJTC input. But we are concerned that administrative justice is not a priority for the MoJ as a whole, that there are heavy pressures on staffing resources, that there is no on-going independent input or endorsement and that new issues will inevitably arise. We believe that there could be considerable benefit in bringing the AJTC resource closer to the development and implementation of the all the work that needs to be done.

Problems of abolishing AJTC

It is clear that abolition of the AJTC is not proving as easy as may have been originally thought when the intention was first communicated in July 2010. I suggest that one of the fundamental problems is that there has not been any clear or consistent rationale for abolition. Widespread support for the AJTC functions has surfaced during Parliamentary debates, in responses to the MoJ consultation, from the Welsh and Scottish governments and in the PASC report. That report described the function of independent review as “one of vital national importance”. The PASC report raised a challenging agenda for further close parliamentary scrutiny of any Abolition Order. The process of abolition will be a distraction from other, more important, priorities. The intention of both Scottish and Welsh governments to set up oversight bodies (to replicate the very well-respected work of our Welsh and Scottish Committees) will highlight the absence of any organisation focused on administrative justice at English or GB levels.

If I may make a more political point, abolition of the AJTC in advance of the 2014 Referendum can be seen as inconsistent with case for preserving Union. The Prime Minister has signalled high priority for that case and it is getting strong Whitehall attention. As that effort gets under way, it will seem very strange – and not just in Scotland - to be abolishing almost the only justice body with a GB-wide remit. More practically, the MoJ will need over the coming years to handle a wide and demanding range of GB-wide issues whether the Referendum is followed by moves towards independence or further devolution.

Benefits of Abolition?

One of the rationales for abolition has been cost savings. But I have to suggest that it will now be very difficult to justify abolition on that basis. When we met, I left with you an analysis which suggested that the savings may now be as low as £400,000 over the remaining two years of the Review period. If the cost of the enlarged MoJ team is then factored in, the net result would be an increase, not a reduction, in overall cost.
It might be thought that it would be a benefit to have less challenge to MoJ and other government departments on administrative justice policy issues. But I do not think I need to persuade you that this is not a valid point. As an independent critical friend, we have sometimes needed to be critical. But we fully accept that our role is advisory and that it is for the government to decide and Parliament to legislate. We hope that we have never been other than constructive and restrained in expressing our views.

The only remaining so-called benefit would be compliance with the policy (on which the Cabinet Office has led since 2010) of abolishing Quangos which “failed” the three-tiered test. But we fear that the original intention to abolish was adopted somewhat hastily and without knowledge of the full facts. Abolition now could be characterised as a “tick-box” exercise simply to cut one more public body. It is widely accepted that the public sector should do much more to improve the quality of services for users. Is it a benefit, for the sake only of numbers, to abolish a public body which is uniquely charged with precisely that remit, and which is also focused on improving the quality and efficiency of justice?

Ways Forward

It will not be easy to maintain public confidence in the administration of justice at a time of unprecedented pressure on public spending, but I know that you will appreciate the fundamental importance of that task.

As you are aware, in October AJTC produced a draft Strategic Plan for 2013-16 to indicate the nature of the activities we believe need to be tackled in the event of our retention. We have been consulting key stakeholders on that Plan. I need to emphasise that it spells out how we could use our knowledge, experience and appetite for innovation to make a substantial contribution to MoJ’s Transforming Justice programme, assist with the ‘More for Less’ approach and help reduce MoJ spending. In particular we are keen to follow up the “Right First Time” agenda, which we pioneered, and to promote more user-friendly and proportionate procedures for correcting officialdom’s mistakes. Reducing case volumes and reducing the time and complexity of cases which do proceed can only reduce the pressures on the MoJ budget.

I also need to emphasise that we are not arguing for the status quo. As our draft Strategic Plan spells out, the AJTC is ready for far-reaching structural, functional and operational reforms. We are more than ready to engage in discussions with your officials about the shape of such changes and our relationship with the MoJ. This could (without the need for statutory change) include an end to AJTC’s status as a Non-Departmental Public Body.

As you are aware, my overall suggestion to you is that you should defer any abolition decision at least until the outcome of 2014 referendum is known. Obviously, we would anticipate a Triennial Review in due course which should then lead to fully-informed decisions about the AJTC’s future.
Conclusion

To conclude, AJTC is currently a fragile – and, frankly, frustrated – organisation. Despite significantly reduced resources and the threat of abolition for most of that time, we have delivered all the commitments we made in our Strategic Plan for 2010-13. But we know that a great deal remains to be done. Our focus as an independent body – in statute and reality – is the accessibility, fairness and efficiency of the Administrative Justice system as a whole. With the greatest respect, we do not believe that these functions can simply be brought inside the MoJ or discharged by the MoJ alone.

As I have mentioned, the Leggatt Review led to AJTC being established as the hub at the centre of the Administrative Justice wheel. Wheels cannot function properly if the hub is removed.

Yours sincerely,

Richard Thomas CBE
Chairman, AJTC
Administrative Justice & Tribunals Council

STRATEGIC PLAN

2013-16

CONSULTATION DRAFT
CONTENTS

About the AJTC

OUR STATUTORY ROLE
OUR UNIQUE POSITION
THE STRATEGIC PLAN IN CONTEXT
TRANSFORMING JUSTICE

Projects to improve accessibility, fairness and efficiency

CENTRAL THEMES

MITIGATING RISKS FACING ADMINISTRATIVE JUSTICE
IMPROVING ADMINISTRATIVE JUSTICE

Speaking on behalf of users

Welsh Committee
Scottish Committee

Revitalising for maximum effectiveness
FOREWORD

To: The Lord Chancellor and Secretary of State for Justice
Scottish Ministers and Welsh Ministers

This is the AJTC’s new strategic plan, the successor document to our Strategic Plan for 2010-13. This revised plan outlines the work we hope to carry out in the three-year period from April 2013 to March 2016. Although the UK Government indicated that it planned to seek Parliamentary approval for the abolition of the AJTC, the draft Order has yet to be laid and it remains possible that any decision will be deferred. In that event, we would expect some of the detail of this plan to be elaborated and adjusted, not least following closer consultation with the Ministry of Justice than is currently possible. We see much of our work as helping government across Great Britain to achieve its various ambitions - including by assisting the Ministry of Justice to achieve its ‘Transforming Justice’ objectives – but from an independent and user-based perspective.

We have decided to proceed with a new strategic plan against this uncertain background for two reasons. First, a series of dates for the anticipated closure of the organisation has come and gone since the prospect of abolition was announced in summer 2010. Despite this background of uncertainty, we have continued working to fulfil the commitments made in our strategic plan for 2010-13. That plan will expire shortly and this new plan will help ensure that worthwhile work will continue until any actual abolition. Secondly, we hope that the plan will be helpful to Parliament if a draft abolition Order is placed before it, as it will then be easier to take a view on the value of the work the AJTC has in hand and the significance of the loss that would arise from abolition.

This Plan outlines projects which we believe must be initiated during the turbulent years ahead to improve the administrative justice system and mitigate the risks it faces. We will prepare annual Action Plans – taking account of resources available to us – setting out specific projects for each year. This Strategic Plan also includes work which we need to carry out in response to initiatives taken by others. Finally, the Plan signals some significant changes to re-vitalise the AJTC during 2013 in a new environment with the aim of working more closely with government and others who can make the changes we recommend, and to improve our own efficiency and effectiveness. We fully expect that if we remain in existence over the 2013-16 period, we would be expected to reduce costs like other public bodies.

The administrative justice system critically needs well-informed input to ensure that it is designed, developed and operated to achieve justice which reflects the interests of its users, both individuals and organisations. Our wish is to continue using our expertise and influence to offer advice to Ministers with that input for as long as we are able to do so.

Richard Thomas, Chairman, AJTC
Richard Henderson, Chairman, Scottish Committee of the AJTC
Professor Sir Adrian Webb, Chairman, Welsh Committee of the AJTC
About the AJTC

OUR STATUTORY ROLE

The key functions of the AJTC as set out in the Tribunals, Courts and Enforcement Act 2007 are:

- 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;
- making proposals for research.

The Act also makes provision for the Scottish and Welsh Committees of the AJTC to carry out similar functions. The AJTC has established a protocol to guide the interrelationship between the AJTC and its Scottish and Welsh Committees.

OUR UNIQUE CONTRIBUTION

Individual decisions by government and other public bodies impact on the daily lives of every citizen. The fundamental values and liberties that underpin our society demand accessible and fair means for people to challenge the misunderstandings, mistakes or wrong decisions which they may believe have been made in their case. Most grievances are resolved without external intervention, but over a million disputes still reach a tribunal or ombudsman every year across the UK.

The AJTC was created to be the independent and authoritative voice to monitor and improve the way public bodies make decisions affecting individuals and the workings of tribunals and other redress mechanisms. Our focus is on the needs of users – to maximise both access and customer satisfaction, and to minimise cost, delay and complexity. We are uniquely well-placed to consider the GB-wide administrative justice system as a whole - from the initial decision affecting the citizen to the final outcome of any complaint or appeal. As an expert, well-established and well-connected body, we are able to draw upon a long standing corporate memory, upon our know-how about the entire system and its evolution, upon our direct observations of the operation of tribunals (both within the HMCTS and beyond) and upon an extensive network of well-informed contacts. As a body which is close to - but not part of – government, we are well-respected as the authoritative and neutral organisation which can stimulate improvements to a government-sponsored system which, by its very nature, involves disputes between government and citizens.

Our purpose therefore is to help make administrative justice increasingly accessible, fair and efficient by:

- playing a pivotal role in the development of coherent principles and good practice;
- promoting understanding, learning and continuous improvement;
ensuring that the needs of users are central;
• making recommendations for further research.

THE STRATEGIC PLAN IN CONTEXT

Against the background of the severe pressures the UK economy is under, the three years between 2013 and 2016 will present unprecedented challenges for the administrative justice system. The austerity agenda means that entitlements are being reduced. Cutbacks in public spending will tend to increase the risks of mistakes by public bodies. Citizens will encounter more decisions which they will wish to challenge, especially when a benefit is withdrawn. Legal and advice services will be available to such citizens less often. The machinery for appeal and other forms of redress – notably tribunals – will in consequence face the heavy pressures of high (and largely uncontrolled) demands, reduced financial and human resources and changes to structures and processes. Implementation of adjustments in the devolution settlements will impact on the powers of devolved administrations and consequently on the position of citizens. The UK Government is understandably – but ambitiously - aiming to “reduce costs, while improving the quality of justice”.

In this turbulent environment, the need for the AJTC to assert a constructive and responsible influence as a “critical friend” of the system will never have been greater. AJTC - with our system-wide and GB-wide responsibilities – is keen to assist both government and judiciary to shape acceptable ways forward. Building upon our previous work, the two priority themes must be:
• reducing the volumes of appeals and complaints; and
• reducing the duration and cost of handling those which do proceed.

TRANSFORMING JUSTICE

AJTC considers that quality of service and user satisfaction must not suffer as resources are cut. With much more attention paid to real user needs, there is considerable scope to achieve faster, cheaper and simpler justice which is better-suited to the needs, wishes and abilities of ordinary people. With new or higher fees driven by full-cost recovery, users will also increasingly expect services which meet their actual needs.
Our planned contribution is designed to support the MoJ’s ambitious programme, aiming to reduce costs by transforming the way justice is delivered by 2015. The programme is supported by a strategic framework which sets out the key issues and questions the MoJ needs to consider as it continues to ‘Transform Justice’, and the cross-cutting, key principles which underpin this next phase of ‘Transforming Justice’. The Framework is annexed to this Plan. Its key principles include delivering ‘better for less’, innovation and continuous improvement. The programme includes exploring new business models and ways to reduce demand on justice services. These are all central themes for AJTC over the next three years.

Our programme also fits well with the Scottish Government’s ‘Making Justice Work’ programme in relation to the reform of the tribunals system in Scotland. We look forward to contributing to the development of the policy announced in September 2010 by the UK Government designed to transfer responsibility for reserved tribunals in Scotland to the Scottish Government. We are keen to be able to assist both the UK Government and the Scottish Government develop user centred proposals.

Our contributions in 2010-13, which included an underlying set of ‘Principles of Administrative Justice’ (applicable both to first instance decision makers and to agents of redress such as tribunals), work on ‘Right First Time’ decision-making, on proportionate methods of dispute resolution (‘Putting it Right’) and on research, have already done a great deal to inform the MoJ agenda on ‘Transforming Justice’. We aim to ensure that our work continues to be helpful to the MoJ at the planning, execution and follow-through stages, and we are also keen – as elaborated below – to work more closely with the Department than has been possible in recent years.
PROJECTS TO IMPROVE ACCESSIBILITY, FAIRNESS AND EFFICIENCY:

Central themes

We will undertake a series of projects to develop central themes which AJTC has already articulated, with a particular focus on new business models with practical changes. These central themes, which have relevance across the UK, include:

- **Right First Time** – proposing structural, organisational, funding and process changes to improve the quality of original decision-making and reduce demand for tribunal and other redress mechanisms;

- **Putting it Right** – supporting innovatory and cheaper redress schemes and developing further the AJTC’s ‘mapping factors’ to match disputes with the most suitable and proportionate redress mechanism;

- **Reducing demand for tribunal services** – a project informed by the work of the Behavioural Insights Team at the Cabinet Office to explore how latest thinking and interventions from behavioural science can be used to influence official bodies and citizens in conflict in order to save public time and money;

- **Channels** – exploring a ‘one door’ or ‘virtual portal’ approach, addressing the overlaps, complexities and gaps across various complaints mechanisms to make it easier and cheaper to pursue a grievance;

- **Feedback mechanisms** - particularly addressing how tribunals can provide better feedback and how its use can improve performance within decision-making organisations;

- **Principles for Administrative Justice** - updating and elaborating the AJTC principles, in particular to increase their influence in practice to achieve better for less and continuous improvement across the system.

Mitigating the key risks facing administrative justice

We will develop projects which constructively and responsibly identify and mitigate the risks for the administrative justice system associated with significantly reduced resources and changes to structures and processes. Likely projects include:

- **Avoiding constitutional stalemates** – using AJTC’s position and influence as almost the only GB-wide justice body - enriched by our Scottish and Welsh Committees - to develop and broker solutions to the dilemmas which devolutionary pressures are increasingly generating for the administrative justice system; also exploring the landscape of cross-jurisdictional tribunals and their implications for users and management;
- **Relationships between courts and tribunals** – exploring the benefits and costs of retaining and valuing the distinctiveness of tribunals, avoiding excessive judicialisation and other costs, adapting techniques from one jurisdiction to another, securing and using better measures of customer satisfaction, and exploring the role of all tribunals including those outside of the HMCTS;

- **A focus on users of the system** – considering the strategic implications of a world where "DIY" unadvised and unassisted litigants are becoming the norm (both for helping appellants and those resolving disputes); considering diversity and ethnicity issues in administrative justice, for example in relation to mental health in view of the disproportionate extent to which some people from BME groups are detained;

- **Tribunal funding** - as full cost recovery becomes a policy goal, considering the impact of fees for employment, immigration and other tribunals; exploring and refining AJTC’s “Polluter Pays” principle and promoting the goal of earlier, quicker and cheaper settlements;

- **Universal Credit and Personal Independence Payments** - reviewing the implementation of these major social security changes, with special reference to initial decision-making and appeals;

- **Mandatory reconsideration, direct lodgement and time limits rules** - monitoring their introduction, their impact on timescales and the overall transparency and efficiency of the processes;

- **Information for appellants** - as independent sources of information and advice decline, assessing the quality, objectivity and usefulness of information from government - notably through the Direct.gov and GOV.UK initiatives - for those wishing to challenge government;

- **Appeal rights** - with pressure to avoid or dilute appeal rights, updating guidance to legislators on when and how appeal rights need to be incorporated into legislative schemes (whilst providing for visibly independent decision makers); exploring the impact on the appeals processes of the impending changes to Council Tax Benefit and the Social Fund; examining users’ experiences in the ways appeals/complaints are managed in outsourced public services;

- **Effective oversight of administrative justice** - developing initiatives, including the forthcoming AJTC ‘toolkit’, to provide instruments and approaches for measuring the quality of the administrative justice system and for assessing prospective changes;

**Improving administrative justice**

As resources allow, we will initiate other projects to contribute to the wider goal of improving the accessibility, fairness and efficiency of the system. These may include:

- **Ombudsmen** – continuing our work to build on their strengths, address their weaknesses and maximise their impact; and to consider the scope
for wider use of ombudsman-type techniques in dispute resolution; considering whether changes imposed on the Local Government Ombudsman maintain sufficient access to justice;

- **Access to the Administrative Court and Regionalisation** - considering if the regionalisation of the Administrative Court has improved access to administrative justice and exploring what more can be done;

- **Tribunal practice** – exploring cross-cutting themes including the role of non-legal members of tribunals; and how far the procedural rule encouraging greater use of ADR is invoked by tribunals; reviewing the acceptability of current professional regulation and fitness to practise arrangements;

- **Alternative business models** – drawing together available data on cost, performance etc. from different dispute resolution system types.

**SPEAKING ON BEHALF OF USERS**

We will continue to take a selective approach to the way we respond to requests by others for comments on consultation exercises and draft legislation. We will select work using the following criteria:

- Work must be important from the user perspective;
- Our contribution will be distinctive and authoritative;
- Our work will make an impact.

As the only organisation well placed to communicate with all administrative justice stakeholders we will continue to act as the ‘hub of the wheel’ of administrative justice, drawing together the various parts of the system. We will work across a wide spectrum of interested parties to promote links and understanding between the various components of the system.

**In particular, we will:**

- comment on significant proposals, from government or elsewhere, impacting on administrative justice;
- respond to consultation exercises where our criteria are met;
- provide evidence to Select Committees and Committees of devolved Parliaments and Assemblies;
- write to ministers and others on key issues, in particular those affecting users’ access to justice;
- continue to act as a ‘critical friend’ of tribunals, HM Courts and Tribunals Service and the Scottish Tribunals Service;
• participate in relevant standing groups such as the Tribunal Procedure Committee, and in user groups, and work with academics and researchers;

• participate in conferences, seminars and workshops;

• write short articles and deliver speeches to communicate our key messages.

Influencing from our unique national/cross-border position

AJTC is a body with responsibilities and functions requiring it to interact with both the Scottish and Welsh devolved governments as well as the UK Government. This means that the AJTC occupies a unique position but also one in which the actuality of developments in the devolution settlements must be recognised. The Council will discuss with MoJ and the Scottish and Welsh Governments how it may best structure and organise its business so as to provide the maximum benefit not only to users but also to government. Our Scottish and Welsh Committees – which will play a key part in this process - are well-informed, well-connected and highly respected.

The period between 2013 and 2015 is likely to be one in which considerable constitutional change is under consideration within the United Kingdom. It is not for the Council or its Committees to become involved in political debate nor does it seek to do that. The proper role for the Council and its Committees is to keep administrative justice and tribunals under review and to offer advice accordingly. That role will inevitably lead the Council and Committees into areas, which touch on the form and nature of arrangements in those areas, which may require to be addressed in the event of such changes being determined on. Any changes in the areas referred to would be likely to impact on the UK as a whole and the Council will structure its work accordingly to recognise that situation.

Scottish Committee of the AJTC

It is beyond doubt that as the scope and nature of the devolution settlement in Scotland has developed over the thirteen years since the coming into being of the Scottish Parliament and the Scottish Government, so also the position of the citizen in relation to government in Scotland and, thus, the citizen’s experience of administrative justice, has also changed. That process is likely to continue.

In discharging its functions the Scottish Committee will seek to monitor and keep under review both the day to day functioning of the administrative justice and
tribunals systems in Scotland and also the wider issues which may arise from time
to time in relation to the development of those systems taking into account any
further constitutional changes.

The Committee will contribute to the work on the central themes identified by the
Council and in addition will consider separate Scottish projects directed towards:
  o seeking to develop and promote research in the area of administrative
    justice with reference to particularly Scottish issues;
  o considering the effect of representation of users before Scottish
    tribunals;
  o facilitating the further development of the Scottish Tribunal Service to
    the extent that the establishment of such is confirmed as the policy of
    government;
  o providing advice to Ministers regarding a possible Scottish
    administrative justice strategy to be implemented once the future civil
    justice landscape in Scotland becomes clearer;
  o ensuring that the administrative justice system in Scotland, and in
    particular the interests of users, are better understood at all levels;
  o exploring the extent to which the current administrative justice
    landscape may recognise the centrality of the user.

Welsh Committee of the AJTC

The advice of our Welsh Committee has played a central part in the development
and rationalisation of the administrative justice system in Wales since the
Committee was formed in 2008. The implementation of the recommendations
contained in its 2010 review of Welsh tribunals will enter a second phase over the
2013-2016 period. The more complex aspects of these recommendations will be
tackled, whilst at the same time the scope of the system will expand significantly,
for example as the Welsh Government implements new Wales-wide measures to
replace the present Social Fund and Council Tax Benefit. In the absence of a
Justice Department in the Welsh Government the Committee will remain an
important centre of specialist expertise.

The Committee will contribute to the work on the central themes identified by the
Council and in addition will consider separate Welsh projects directed towards:
  o seeking to develop and promote research in the area of administrative
    justice with reference to particularly Welsh issues;
  o facilitating the further implementation of the recommendations of the
    Welsh Committee’s 2010 review;
  o advising on issues arising from the growth of the administrative justice
    system in Wales and the growth of new jurisdictions over the 2013-16
    period;
  o promoting a better understanding of the administrative justice system
    in Wales.
Revitalising for maximum effectiveness

To maximise our influence, and to improve our own effectiveness and efficiency, AJTC wishes to revitalise its approach. This will involve significant changes which the Council and Secretariat are keen to embrace. The precise nature of these changes will evolve during the first six months of 2013, but their broad nature can already be indicated. They include:

Restoring a closer and well-structured relationship between the Ministry of Justice and the AJTC

The MoJ is the AJTC’s sponsor department and the Council’s statutory functions focus on advice to the Lord Chancellor. The MoJ recognises the value of the past contribution of the AJTC but inevitably relationships have become more distant during the course of the debate about the future of the organisation. We will seek to ensure that the MoJ will continue to gain benefit from AJTC advice and support in developing and implementing workable policies, rooted in experience and closeness to users, which will improve the delivery of administrative justice. AJTC can assist the MoJ in facing up to vested interests and saving money. Both the MoJ and AJTC need to make the best possible use of very limited resources. With a mature and more powerful relationship, there is scope for both the AJTC and MoJ to exploit the Council’s independent, objective and expert contribution more effectively.

Specifics may include:

- Reflecting and elaborating upon MoJ’s strategic priorities in AJTC Action Plans;
- Consulting MoJ as Action Plans develop, seeking to secure the right balance between own-initiative activity and work which the Government would like AJTC to undertake;
- Including an agreed number of remits each year, where MoJ (or another government department or the devolved governments) formally asks AJTC or its Committees to tackle a specific project;
- Making a proactive, positive contribution as MoJ develops its strategies and priorities;
- Giving particular support to MoJ on:
  - developing and rolling out innovatory (and cheaper) methods of dispute resolution;
  - establishing new strategies for dealing fairly with self-represented appellants (both for helping such appellants, who are becoming the norm in the administrative justice system, and for the benefit of those resolving disputes);
- Helping MoJ to access AJTC networks and secure their greater involvement.
Relationships with other government departments

Other government departments – whether directly, through their agencies or as a result of their policies – play a major role in the administrative justice system, generating most of the workloads of tribunals, ombudsmen and other redress schemes. Operational decision-making and complaint-handling rarely get priority. There is considerable scope for closer links with key departments so that they benefit more directly from AJTC’s contribution.

Specifics may include:

- Ensuring that major decision-making departments are better aware of AJTC’s potential to help them improve the quality of decision-making and complaint-handling;
- Sharing good practice from one sector to another, especially to reduce the flow of cases into tribunals;
- Helping departments get meaningful and useful feedback from tribunals;
- Consulting on Action Plans and agreeing remits.

Council and Committee members and Secretariat

AJTC’s strongest feature is the quality of its Council, Committee members and Secretariat. Members are experts across diverse fields who have been appointed on merit after competitive processes. They have deep knowledge, objective insights, excellent contacts and high standing. The Secretariat attracts a unique mix of those who have worked at the coal-face of administrative justice and talented researchers who choose to work in a reforming organisation which can make a real difference. Members and Secretariat work closely and productively together, not least in exploiting a strong corporate memory. But there is scope to reduce costs and to bring greater efficiency.

Specifics may include:

- Reducing the numbers of Council and Committee members;
- Matching the remuneration of members more closely to their expected contribution;
- Ensuring the optimum balance within the Secretariat between policy and support staff;
- Brigading the Secretariat or part of it alongside, and possibly within, the MoJ policy team;
- Brigading the Secretariat (so far as it supports the Welsh Committee) alongside the Welsh Government.

Working methods

There is scope for the AJTC to work more closely with all administrative justice stakeholders, drawing together the various parts of the system. We will work with stakeholders to promote links and understanding between these various components.
Specifics may include:

- Increased engagement with citizens as users of administrative justice, and related representative bodies;
- Exploring better ways for their views to be heard and addressed;
- Keeping in close contact with those providing advice, assistance and representation to citizens in the different areas of administrative justice;
- Undertaking joint projects with both statutory and non-statutory bodies;
- More ad hoc seminars and workshops to bring together those who otherwise do not meet;
- Developing proposals for additional lines of research by MoJ and others.

Measuring and demonstrating effectiveness

AJTC is proud both of its track-record and its potential. It is notoriously difficult to measure the effectiveness of an advisory body. Our work will often influence the course of debate or policy development over time, rather than achieve the immediate adoption of our recommendations.

Our effectiveness will be shown through delivery of each year’s Action Plan and identifying issues where our voice has been heard and where we have made a difference. As an advisory Arms Length Body, AJTC must be – and be seen to be – ever-more accountable. Equally, the continued robustness of our independent voice will remain key to our effectiveness.

Specifics may include:

- Improving Key Performance Indicators by:
  - Publishing a Project Plan for each project;
  - Publishing progress via set milestones;
  - Delivering projects in line with plans;
  - Target turnaround times for responding to consultation exercises.
- Improving the ability to influence through higher profile and greater public engagement;
- Scrutiny through the Triennial Review process.
Written evidence from the Welsh Committee of the Administrative Justice and Tribunals Council (WCAJTC)

Draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013

Summary

- The WCAJTC operates as a component part of a cross-border body overseeing the GB-wide administrative justice system. It seeks a joined-up, cohesive approach to administrative justice in the interests of users.

- Abolition of the AJTC, and with it the WCAJTC, would:
  i) deprive the Ministry of Justice (MoJ) of a voice representing distinctively Welsh concerns;
  ii) deprive Welsh users of an oversight body which makes cross-border links insofar as there are issues of common concern to both Wales and England/Scotland. This cross-border perspective enables the development of shared insights and expertise;
  iii) in the absence of an effective replacement, entail the loss of an expert advisory body with specialist insights for the Welsh Government on devolved matters;

- The proposed successor body would have a restricted remit without oversight of reserved administrative functions or tribunals.

- The Administrative Justice Advisory Group would be inadequate without being able to operate effectively as a pan-GB body, including through distinctively Welsh input.

Introduction

1. This is the response of the Welsh Committee of the Administrative Justice and Tribunals Council (WCAJTC) to the Justice Select Committee’s call for evidence on the draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013 (‘the Order’). If enacted, the Order would abolish the WCAJTC and its statutory functions.

2. The WCAJTC was established under the Tribunals, Courts and Enforcement Act 2007. It has six members, comprising the Chair (Professor Sir Adrian Webb), three appointed by the Welsh Ministers, and two ex-officio members (Peter Tyndall, the Public Sector Ombudsman for Wales and Dame Julie Mellor, the Parliamentary and Public Health Services Ombudsman).

The WCAJTC sees itself both as a component part of the wider AJTC (‘the Council’) and as a separate body exercising particular oversight of policy and

---

1 TCEA 2007, Schedule 7, Paragraph 7
legislative developments impacting upon the Welsh administrative justice system and the tribunals sitting in Wales.²

3. The WCAJTC oversees both the devolved administrative functions and tribunals and the reserved ones (in the latter case insofar as they are applicable to Wales). The WCAJTC therefore has particular understanding of the issues which arise in a country with a devolved government but no devolved justice system as such.³ Indeed, the WCAJTC understands one of its primary functions to be the encouragement of overall cohesion within a constitutional system made up of various, and potentially conflicting, strands, and in which a number of agencies exercise differing responsibilities on a cross-border basis.

4. Evidence has been invited on three specific points. The WCAJTC intends in substance to comment only on the first of these.

Issue 1: the proposed arrangements for independent overview of the administrative justice and tribunals system, including the role and membership of the Administrative Justice Advisory Group

The AJTC as a GB-wide body

5. The AJTC - as complemented by the WCAJTC and its sister committee in Scotland - operates across the entirety of Great Britain. The MoJ needed the consent of Welsh Ministers before the abolition Order could be laid,⁴ and, as the Secondary Legislation Scrutiny Committee (SLSC) has stated, there must be an affirmative vote in the Welsh Assembly before the Order can be made.⁵

6. It is worth noting in that regard that, statutorily, the WCAJTC is the “Welsh Committee of the Council” (emphasis added).⁶ As such, it is the Council, acting through the WCAJTC, which exercises responsibilities in relation to Wales.

7. Against this background, the WCAJTC was therefore disappointed that there was no consultation between the Council and the MoJ before the abolition proposal was announced.⁷ This lack of engagement meant that there was no opportunity for the consequences of abolition for Wales to be discussed following input from the WCAJTC.

WCAJTC views on abolition

8. If it had been consulted, the WCAJTC would have argued strongly against the abolition of the AJTC, and with it the WCAJTC, or at least at the present time. There are four key reasons for this.

² The tribunals which fall under the WCAJTC’s oversight are listed in the Administrative Justice and Tribunals Council (Listed Tribunals) (Wales) Order 2007 (S.I. 2007/2876)
³ Although there is no devolved Justice Ministry in Wales, the WCAJTC considers that aspects of the justice system – and especially of administrative justice – are being devolved incrementally as a result of the devolution of related executive functions.
⁴ i.e. further to the provisions of the Public Bodies Act 2011
⁶ No. 1
⁷ No. 5, paragraph 10, citing an answer given to the SLSC from the MoJ
There is a continuing need for the WCAJTC to support the Welsh Government as it implements the WCAJTC’s 2010 ‘Review of Tribunals Operating in Wales’.\(^8\)

9. This review was a thorough root and branch investigation of the tribunal system in Wales, which we considered to be an uncomfortable \textit{ad-hoc} patchwork in which the concept of the separation of powers was not always thoroughly endorsed.

10. Insofar as it was within the gift of the Welsh Government to act upon our recommendations (and in particular those concerning how the management of devolved Welsh tribunals should be removed from the government bodies whose decisions they review) the Government embraced the report more or less in its entirety. It set up a centralised Administrative Justice Unit and began a process of gradually moving the devolved Welsh tribunals into it. That work is ongoing, and the oversight of the WCAJTC remains important.

The AJTC provides the WCAJTC with valuable cross-border insight into matters which continue to be reserved to Westminster

11. The WCAJTC is able to feed into the Council’s work whilst noting its insight on matters which impact upon Wales but for which Westminster remains responsible. With the AJTC’s support, the WCAJTC is better able to understand the combined effects of devolved and reserved functions and to provide advice accordingly. The abolition of the AJTC would therefore deprive Wales of ready access to such advice and analysis deriving from common experiences across different parts of Great Britain.

12. Whilst many administrative responsibilities are now devolved in Wales, others (notably the welfare benefits system) are not. The present complex arrangements mean that there are various issues of common concern to the administrative justice systems of Wales, England and Scotland together. These are regularly examined by the Council, whose membership includes Welsh and Scottish representatives. The GB-wide perspective is also brought onto the WCAJTC through the \textit{ex officio} membership of the Parliamentary and Public Services Ombudsman. Abolition would therefore remove a valuable source of expertise on cross-border issues, something which cannot be to the advantage of the Welsh administrative justice user.

The WCAJTC provides a specialist source of advice and expertise on the impact of devolution for Welsh administrative justice

13. The WCAJTC, as an expert body with a specialist remit, maintains oversight across a system which is ever changing. In our view, unless and until such time as there is a separate Welsh justice system overseeing exclusively Welsh administrative functions, then there is a need for a body with similar functions.

14. A recent example of the work of the WCAJTC is the advice it has been giving to the Welsh Government on the implications of the devolution of the appeals system in council tax support cases to the Valuation Tribunal for Wales — i.e. with the abolition of council tax benefit and its replacement by a localised ‘reduction scheme’ system further to the provisions of the Local Government Finance Act 2012. Here the impact of cross-border expertise of the AJTC has been valuable in

\(^8\) Available at: \url{http://ajtc.justice.gov.uk/docs/RTOW_English_t.pdf}
supporting the formation of the advice which the WCAJTC has provided in the Welsh context.

15. The extent of the WCAJTC’s oversight of the devolved system is considerable. It includes supervision of listed tribunals but it is also concerned with other aspects of administrative justice, such as initial decision-making, complaint handling and the work of ombudsmen. The Public Services Ombudsman for Wales is an active member of the WCAJTC and keeps it informed of his work and the wider initiatives he is engaged in. The WCAJTC also works to support the Ombudsman, for example by encouraging take-up of the Welsh Model Complaints Policy for public bodies. This is all indicative of the holistic nature of the WCAJTC’s role and the importance it attaches to engendering cohesive administrative justice within Wales. It is an important role which the AJTC’s abolition would put at risk.

The proposed Advisory Group is too weak from a Welsh perspective

16. The WCAJTC is not convinced that the proposals for the Administrative Justice Advisory Group (to meet only twice a year, on a voluntary basis, and with no accompanying secretariat) are sufficient to ensure that the independent advisory functions of the AJTC and WCAJTC are replicated. In terms of its membership, we believe, at the very least, that the Group must have Welsh – including Welsh language – 9 representation in order to be operationally cohesive and capable of advising the MoJ on distinctively Welsh issues.

The proposed non-statutory successor body

17. Proposals for a successor non-statutory body to replace the WCAJTC and advise the Welsh Government have now been set out in the explanatory document to the Order and the draft MoJ Administrative Justice and Tribunals Strategic Work Programme.

18. The WCAJTC is not however persuaded that the proposed arrangement (as set out in particular at section 8 of the explanatory document) is sufficient to ensure that the shortcomings of the abolition plan will be addressed. This is for the following reasons:

The current proposals would not enable oversight of reserved administrative functions and tribunals

19. The agreement does not provide for the successor body to have continuing oversight of reserved tribunals and functions operating in Wales. In our view, this is a significant weakness. The WCAJTC believes that the successor body should continue to have oversight of Westminster-based decision-making insofar as it impacts upon Welsh citizens, and that it should have continuing visiting rights to observe tribunals administered by Her Majesty’s Courts and Tribunals Service sitting in Wales. Such a visiting right should, as now, include a right to attend the deliberation stage of proceedings.

---

9 There is a fluent Welsh speaker on the WCAJTC, whilst the Committee takes a strong interest in the robustness of the structures in place to support Welsh-speaking users of the system.
The current proposals suggest a tribunals-only remit

20. Paragraph 8.4 (a) of the explanatory document appears to indicate that the successor body will have a temporary remit in respect of tribunal reform, which is to say nothing of administrative justice more generally. If this is the intention, then the WCAJTC cannot support it.

21. The entire rationale of the new tribunal structure as established by the 2007 Act was that it should represent the last stage of a co-ordinated system of administrative decision-making. The remit of the WCAJTC has always acknowledged the reality that oversight of tribunals is ultimately deficient if it does not include an advisory role in relation to the decision-making processes which are challenged within those tribunals.

The current proposals are unlikely to secure the body’s longevity or independence

22. The modest support of £100,000 per year over a two-year period in the absence of support from a parent body will make it difficult for the successor body to operate effectively. The Council and the WCAJTC together believe that such effectiveness is dependent upon the successor’s exercise of the existing functions of the WCAJTC, and in a similar manner. It is essential also that its remit should cover the whole field of administrative justice.

23. The WCAJTC also believes that its independence and current arms-length status are crucial to its ability to represent the interests of the user as forthrightly as circumstances demand and that these features should be preserved in ant successor body

Conclusion

24. For these reasons the WCAJTC believes that the plans to abolish the Council are ill-advised, and that, from a Welsh perspective, they lack consideration of their likely effects upon administrative justice users. Moreover, the proposed successor to the WCAJTC is not in its current form likely to replicate the WCAJTC’s work to an acceptable degree. This will ultimately be to the detriment of Welsh public service users and tribunal appellants.

February 2013

---

My submission concerns the recent announcement that the Committee is seeking views on matters relating to the abolition of the Administrative Justice and Tribunals Council (AJTC).

I have noted, in particular, that the Committee is interested in views about proposed arrangements for independent overview following abolition of the AJTC. The importance and strength of independence are closely linked to my current experience, in the role of Social Fund Commissioner, of leading an organization that delivers an independent review of administrative decisions taken in Jobcentre Plus.

The role of Social Fund Commissioner is a statutory one which provides for an independent post holder to supervise the recruitment and training of the Social Fund Inspectors who provide the independent tier of review, throughout Great Britain, for people who dispute the decision that Jobcentre Plus made on their application to the discretionary Social Fund. I was appointed in December 2009. The Welfare Reform Act 2012 introduced changes, including the abolition of the discretionary Social Fund which takes effect at the end of March 2013. As a consequence, my role and that of the Inspectors will be abolished at the end of July 2013.

The proposed arrangements on which the Committee is consulting indicate that the Ministry of Justice will take the clear lead in Government on further development of administrative justice policy. The intention is that they will work pro-actively with other Government Departments with responsibility in this area to ensure a coherent and consistent approach is taken in policy development. I recognize that policy development for the administrative justice system rightly sits with the Ministry of Justice and that a coherent and consistent approach is a commendable objective.

The oversight of the complex administrative justice landscape is however quite different to that of policy development. Here it is necessary to demonstrate independence, both in reality and perception. All citizens have a legitimate interest in the fairness, impartiality and transparency that characterize the delivery of administrative justice. By way of oversight, the proposal includes provision for an Administrative Justice Advisory Group, which will meet twice a year. I note that this will be positioned within the Ministry of Justice and chaired by one of its Directors. Its secretariat will come from within the Ministry of Justice. While the intention for this group is to inject the user perspective in
policy development, 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. The extent to which the Ministry of Justice will control the future oversight, may cast doubt in the public mind about its independence and therefore its legitimacy. In order to achieve the necessary level of public confidence in the successor arrangements, it is essential that its oversight is carried out by a body that is clearly independent of the policy makers and demonstrably free from the influence of ministerial or political influence.

February 2013
Abolition of the Administrative Justice and Tribunals Council

1. The Public and Commercial Services union (PCS) is the largest trade union in the civil service with over 260,000 members in the civil service and associated public 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 argues that the AJTC should not be abolished and its functions placed within the MoJ. We have raised concerns that placing the roles and functions within the MoJ would not make sense as it would effectively mean that the Ministry would be its own watchdog.

3. PCS submitted evidence to the Public Administration Select Committee’s inquiry into the body’s abolition in November 2011 that detailed our concerns about its cessation. The AJTC is a crucial non departmental public body that ensures tribunals and Ombudsmen get decisions right and considers how to make the justice system accessible, fair and efficient.

4. PCS welcomed the ministerial statement on AJTC from the Parliamentary Under-Secretary of State for Justice, Helen Grant MP on 20 December. We believe that the programme of work set out in the statement would be best delivered by the existing staff at AJTC who have the skills and experience required to deliver it.

5. The Lords Secondary Legislation Scrutiny Committee’s report, published on 31 January 2013, recommends that “the Minister publishes a mapping exercise showing bodies under the aegis of AJTC and showing their status in relation to the unified Tribunal System, the Advisory Group and the MOJ now and at 31 March 2013, the date proposed for the abolition of the AJTC.”

6. We are concerned that this will be a large complex task, particularly when Welsh and Scottish governments are factored in. The AJTC tried to produce such a map itself in 2007/8 but lacked the resource and IT support to carry it through.

7. We do not believe the cost savings arising from closing the AJTC are accurate.

8. The MoJ’s revised impact assessment published on 21 January 2013 shows a large reduction in projected savings from the abolition. Projected savings over ten years are down from £11.7 million to £5 million or less. The savings in the current spending period, previously in the order of £4 million, are re-stated as being £600,000.
9. PCS is concerned that the profile of monetised costs and benefits in the MoJ’s current full economic assessment are inaccurate. The costs of subsidising the new Welsh and Scottish bodies and the cost of staff redundancy are cash costs and reduce the net savings. We are concerned that making staff redundancies are shown as an additional saving, not taking into account the cost to the economy.

10. In their impact assessment, the MoJ states in their evidence base that “the Secretary of State has decided that the functions of the AJTC are no longer required as they duplicate existing arrangements or are properly performed by government.” PCS is concerned that there is no evidence to suggest that the sufficient resources and expertise are, or will be, available in the MoJ to carry out continuing functions undertaken hitherto by the AJTC.

11. The MoJ is pushing ahead with making AJTC staff redundant as soon as possible. We are concerned that these redundancies are going ahead despite there being no plans in place for the work that these staff currently do. Alarmingly, there appears to be a “we will cross that bridge when we come to it” attitude from the department. There is clearly no contingency plan to continue to carry out the roles and functions currently being carried out.

12. PCS believes that the distribution of ‘at risk letters’ to staff should not be allowed to go ahead at least until the legislation is passed and parliament has had the opportunity to ensure that proper contingency plans are in place.

14 February 2013
Abolition of the Administrative Justice and Tribunals Council

1. Introduction

The Ombudsman Association was established in 1991 and includes as members all major Ombudsman schemes and complaint handling bodies in the United Kingdom and Republic of Ireland. The Association’s objectives include:

- encouraging, developing and safeguarding the role and title of Ombudsmen in both the public and private sectors
- setting criteria for the recognition of Ombudsman offices by the Association
- formally recognising those persons or offices who satisfy the criteria
- facilitating mutual learning and providing services to members designed to develop best practice working to raise the profile of Ombudsmen and the understanding of their work

The Association welcomes this opportunity to submit evidence to the Justice Committee about the proposed abolition of the Administrative Justice and Tribunals Council (AJTC).

Our submission is informed by the experience we have gained representing and working with our member schemes, who together form a key part of the wider administrative justice landscape, as well as with many years of close co-operation and involvement with the AJTC and its predecessor body, the Council on Tribunals.

2. Concerns about an MoJ oversight role

The Association’s concerns about the role of the AJTC being taken over by the Ministry of Justice (MoJ) are primarily around the issues of:

- independence from Government;
- the perception of exclusivity of administrative justice within MoJ;
- the need for broad influence and engagement.

2.1 Independence

The Association does not feel that the oversight of administrative justice within the MoJ would be seen as independent, nor would it be truly independent. There would always be a concern that oversight through a central government department may be influenced by government policies and would not therefore be able to provide the necessary independent scrutiny, recommendations and advice required and expected from an oversight body.

Furthermore, without an independent ‘champion’ such as the AJTC, there is a fear that administrative justice would suffer as the ‘poor relation’ of justice, second to the criminal and civil justice systems. Administrative justice, including ombudsmen, is of increasing importance and benefit to citizens and consumers seeking redress and remedy for injustice created by public and other bodies.
2.2 Exclusivity

The positioning of administrative justice oversight within the MoJ would give the incorrect perception among government, government departments, MPs and the public that administrative justice is the exclusive concern of MoJ. That is not the case, especially where ombudsmen are concerned. MoJ is currently sponsor department for only two ombudsmen (Legal Ombudsman and Prisons & Probation Ombudsman). Currently, other government departments concerned with public sector independent complaint handlers/ombudsmen include:

- Department for Communities and Local Government: Local Government Ombudsman and Housing Ombudsman
- Home Office: Independent Police Complaints Commission

The Parliamentary and Health Service Ombudsman has no sponsor department, but is answerable to Parliament, through the Public Administration Select Committee. Within the private sector, and arguably also concerned with administrative justice, especially where former public utilities are concerned, regulators concerned with ombudsmen include:

- Financial Services Authority - Financial Ombudsman Service
- Ofcom - Ombudsman Services: Communications (formerly Telecommunications Ombudsman)
- Ofgem - Ombudsman services: Energy (formerly Energy Ombudsman)

The Department of Health, as part of its review into cosmetic interventions, is considering an ombudsman for that sector, and the Department for Business, Innovation and Skills is involved with EU proposals for alternative dispute resolution for all suppliers of consumer goods and services.

So it can clearly be seen that MoJ is far from having a monopoly in the administrative justice arena. It is inconsistent with the landscape to place the responsibility for oversight with it.

2.3 Broad influence and engagement

Because of the wide range of bodies and departments engaged with administrative justice, the body charged with oversight needs to be able to stand back; to take in the ‘bigger picture’. And it needs to be held in respect by all, so that it can command sway and influence. It is self-evident that an independent body is in the strongest position do so. There is not strong precedent for government departments responding well to oversight by other departments – but putting that to one side, the need for respect and influence extends outside government to the public and institutional stakeholders.

Finally, the AJTC has a UK wide oversight of administrative justice, having both Scottish and Welsh Committees. There is considerable danger, the Association feels, of losing that wider oversight and concentrating solely with provision in England, should the AJTC’s role be taken on by MoJ.
3. Conclusion

The Ombudsman Association has a strong belief in the value of independent oversight of administrative justice. For the reasons set out above, the Ombudsman Association supports the current role and functions of the AJTC and supports its retention, even if in a revised form. It does not believe that MoJ oversight, even with the support of the Administrative Justice Advisory Group, will be an appropriate or adequate substitute.

February 2013
Written evidence from the Parliamentary and Health Service Ombudsman

Government’s plans to abolish the Administrative Justice and Tribunals Council (AJTC). We welcome that the Justice Committee is taking an interest in this issue.

Introduction

1. As the Committee will be aware, the role of Parliament’s Ombudsman service is to investigate complaints that individuals have been treated unfairly or have received a poor service from Government departments and other public organisations in the UK and the NHS in England. The Committee may also be aware that the Ombudsman is an ex officio member of the AJTC, and a member of both its Scottish and Welsh Committees.

2. In our response to the Ministry of Justice’s consultation on the abolition of the AJTC (October 2011) and in our submission to the inquiry by the Public Administration Select Committee (PASC) into oversight of the administrative justice landscape (November 2011), we set out in detail why we expect the AJTC’s abolition to have a detrimental effect on the delivery of administrative justice in the UK and on the relationship between citizen and state.

3. Your call for evidence states that you do not want to duplicate previous scrutiny work. We will therefore not repeat in this submission our detailed argument against the abolition of the AJTC. However, we would like to use this opportunity to summarise our main concerns.

Independent overview of the administrative justice and tribunals system

4. The AJTC’s abolition will remove the only public institution to have oversight of the administrative justice system as a whole and with a UK perspective, and with a remit to promote coherence and integration.

5. The fact that the Ministry of Justice 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. Furthermore, the Ministry does not have a UK-wide remit.

6. The AJTC’s focus on the user perspective, which is reflected in its composition and which is linked to its independence from government, will be lost.

Resources and expertise within the Ministry of Justice

7. The Ministry of Justice published in December 2012 its Strategic Work Programme on Administrative Justice and Tribunals, which aims to set out the ‘Government’s overarching objectives’ for the administrative justice and tribunals system between 2013 and 2016. This publication has done little to lessen our concerns.
8. We agree with the criticism of Richard Thomas CBE, Chairman of the AJTC, that the Strategic Work Programme lacks ambition and commitment beyond routine policy work.

9. In our view it is also 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 analysis on the removal of Legal Aid encouraged access to ombudsmen as an alternative.

10. Neither does the Strategic Work Programme address the question of how the proposed new arrangements can achieve independent oversight of the administrative justice system.

Conclusion

11. Following publication of the Strategic Work Programme we therefore remain concerned that administrative justice is not a priority for the Ministry of Justice and that the Ministry does not have the capacity, expertise and commitment to adequately cover the core functions of the AJTC.

February 2013
Written evidence from the Local Government Ombudsman

Administrative Justice and Tribunals Council

1. The Local Government Ombudsman (LGO) welcomes this opportunity to submit evidence to the Justice Committee. The LGO provides an important independent course of redress for injustice to service users of local authority services and those delivered on behalf of local authorities in England. Last year the LGO received over 11,000 complaints from service users across England. Our response is informed by the experience we have gained as a key part of the wider administrative justice landscape.

Independence from central Government

2. The LGO is concerned that the transfer of responsibility from the AJTC to a government department (MoJ) would no longer achieve an overview of administrative justice which is independent of the executive.

3. The LGO is concerned that placing the responsibility for oversight of the Administrative Justice system within a department of government would be constrained by respective government policy agendas. This will undermine its ability to; provide constructive challenge to government, support Parliament in its scrutiny of administrative justice and deliver a bottom up, user focused service.

Engagement with key bodies

4. Since oversight of administrative justice will become a MoJ function it may be viewed as being the exclusive responsibility of that department. Government more widely, especially those departments with a large service delivery function, make numerous administrative decisions on a daily basis. The LGO is concerned that other government departments and public bodies may come to view administrative justice as simply a MoJ issue and fail to take seriously their own responsibilities for good administrative decision making.

5. Administrative Justice is an important issue which is directly relevant to all government departments and public bodies. Oversight arrangements need to encompass all departments with a view to engaging all bodies involved in administrative justice. Ombudsman schemes, for example, are sponsored by a range of government departments.
MoJ would be unable to replicate AJTC provision

6. An effective high quality administrative justice system is of great public benefit; by driving forward better public service delivery and addressing failures. Many Members of Parliament will regularly address cases in their constituency surgeries. Often this involves input of an ombudsman, tribunal or other administrative justice body to remedy the situation. Whilst administrative justice is an important issue, it rarely receives the same level of attention and focus as other parts of the justice system, particularly criminal justice.

7. The AJTC plays a fundamental task in ensuring that citizens’ interests are represented. Part of the AJTC’s role is to consider ways to ensure the administrative justice system is “accessible, fair and efficient”. The broad range of responsibilities and policy challenges that the MoJ faces will impact on its ability to deliver this role.

8. The AJTC is able to provide an important role in improving/increasing the profile of administrative justice through its newsletters and conferences. Its dedicated voice ensures that administrative justice does not get crowded out of the wider justice debate. It is unlikely that this will be replicated from within the MoJ.

UK wide role

9. UK wide engagement could be significantly undermined by the abolition of the AJTC. An independent UK wide body is necessary to effectively outline issues and best practice which exists throughout the UK.

10. The LGO fully supports the function that the AJTC provides; UK wide engagement, full independence from Government, ability to cut across departmental and national boundaries and sole commitment to administrative justice.

February 2013
Written evidence from Dr Jeff King, University College London, 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

Draft Public Bodies (Abolition of the AJTC) Order 2013

I. Summary of Conclusions

In the analysis below, we conclude that the plans for administrative justice after the abolition of the AJTC are flawed in the following ways:

- Proposed arrangements for independent overview
  - There is inadequate subject-matter and geographical coverage
    - Will not cover the whole administrative justice system,
    - Will not be UK-wide; disparity to devolved administrations
  - Plans for independent input are insufficiently developed:
    - No ongoing input or endorsement – too ad hoc.
    - No concrete plans to commission independent research
    - No indication that independent contributors will be allowed to set their own agenda
  - The Administrative Justice and Advisory Group is insufficient to play the “independence” role played by the AJTC:
    - A poorly planned afterthought; inadequate information supplied
    - Lacks the status, continuity, and gravitas of the AJTC
    - No indication of whether its output will be published and official

- Resources and expertise
  - Inadequate figures provided for overall staff numbers and turnover rate
  - Refusal to acknowledge administrative justice as a specialty policy area
  - Lack of relevant expertise in the MoJ’s interdisciplinary team

- The cost savings cannot be accurate
  - Revised savings estimate is welcomed, but it demonstrates the extremely minor financial gains made for such a potentially great disruption
  - There are methodological flaws in the determination of actual savings – notable omissions and underestimates
I. Introduction

1. In the Justice Committee’s call for evidence relating to the Draft Public (Abolition of Administrative Justice and Tribunals Council) Order 2013, it sought evidence in particular 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;
- The Government’s estimate of cost savings arising from closing the AJTC is likely to be accurate.

2. Each of these will be addressed in turn. We commence however with brief observations on the role of administrative justice and the process undertaken for abolishing the AJTC and designing successor arrangements.

II. The Role of Administrative Justice and the AJTC

3. It is necessary to outline the statutory tasks of the AJTC and to show the reach and significance of administrative justice for the public.

4. The Leggatt Review of Tribunals recommended that the Council on Tribunals have its remit extended so that it became the hub of the wheel of administrative justice. In the Tribunals, Courts and Enforcement Act 2007, Schedule 7, the Council on Tribunals was abolished and the new Administrative Justice and Tribunals Council was created to carry out these duties:

   (a) keep the administrative justice system under review,
   (b) consider ways to make the system accessible, fair and efficient,
   (c) advise the Lord Chancellor and Scottish and Welsh 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.

5. Schedule 7 defined the administrative justice system as:

“…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 decision”

6. This definition of administrative justice is concerned with the whole journey of an individual dealing with a public body or service, from initial contact and the original decision-making through to the range of remedies to resolve a dispute, starting internally through complaints and reconsideration, and onwards externally to a complaints handler, and/or an ombudsman, or an appeal to a tribunal, and by challenge in the courts.

7. As the Public Administration Select Committee (PASC) emphasised in its report last year, it is a system that “touches upon the lives, the standards of living, and rights of millions of citizens every year”.1

III. Comment on the Process Leading to Abolition

8. The House of Lords Secondary Legislation Scrutiny Committee (the ‘Lords Committee’) recently concluded that the Government’s “consultation has been about how to close down the AJTC rather than a proper consideration of whether it should be done”2. In other words, “the process followed has prejudged the outcome”3, and this, the Committee felt, constituted “poor practice”4.


3 Ibid, 31.

9. Much of the criticism was levelled at the Explanatory Document accompanying the Order. It was described as “unsuitably vague”\(^5\), and “unconvincing”\(^6\). It was said not to have made clear whether and how the Government had addressed concerns raised in its original consultation\(^7\).

10. In the PASC Report, the PASC asked for further information on: how the Government proposed to improve its own decision-making and redress systems\(^8\); on the proposed Advisory Group\(^9\); on the MoJ’s resources and expertise\(^10\); and on how the MoJ would carry out the AJTC’s necessary functions\(^11\). A year later, the Lords Committee admits that they are “still not clear about how far the considerable concerns expressed in the consultation responses will have been resolved by the time this Order takes effect”\(^12\).

11. The Strategic Work Programme adopted by the Government in our view does not improve the situation. It manifests the same flaws. The Programme offers only a series of promises which, at best, lack clarity, and, at worst, avoid substance altogether. In it the Government promises to take a more “hands-on approach”\(^13\), to “talk with representatives”\(^14\), to “build on AJTC […] proposals”\(^15\), to have “better end-to-end performance information”\(^16\), to “incentivise decision-making”\(^17\) and to “manage down” inefficiency\(^18\). Government’s innovative techniques will include looking at “major gaps”\(^19\), gathering “better information”\(^20\), and convening “user groups.”\(^21\) In short, the

\(^5\) Ibid, 31.
\(^6\) Ibid, 31.
\(^7\) Ibid, 12.
\(^8\) PASC Report, p.52.
\(^9\) Ibid, 28.
\(^10\) Ibid, 35.
\(^11\) Ibid, 56.
\(^12\) Ibid, 31.
\(^14\) Ibid, [73].
\(^15\) Ibid, [71].
\(^17\) Strategic Work Programme, [17].
\(^18\) Ibid, [38].
\(^19\) Ibid, [81].
language leaves the strong impression that there is no concrete plan for how to carry on the AJTC’s functions after its abolition. The lack of substantive strategic content in the Government’s plans stands out sharply against Sir Andrew Leggatt’s identification of the AJTC as the “hub of the wheel of administrative justice.”

IV. Proposed Arrangements for Independent Overview

12. The PASC last year stressed that independent overview of the administrative justice system is of “vital national importance.” We wholeheartedly agree.

13. The proposed arrangements fail to secure sufficient guarantee of independence. There are three particular issues – coverage, independent input and the Administrative Justice Advisory Group (AJAG). We conclude that the proposed arrangements, such as they are, are inadequate.

A. Inadequate coverage

14. The Government’s proposed arrangements fail to deliver comprehensive coverage across the administrative justice system, and across the United Kingdom.

15. In terms of the administrative justice system, there has been insufficient attention paid to administrative justice beyond tribunals. Moreover not all tribunals “are or will be included in the centralised system.” The prospects of complete coverage in the foreseeable future appear slim given the MoJ’s reluctance to commit to “resource intensive” transfers unless there are “clear benefits” in doing so. In fact, one senses that Government has accepted something of a ‘them-and-us’ culture in the tribunal sector. For instance, in the Strategic Work Programme, the MoJ remarks that they are “interested in learning from other tribunals and seeing what good practice we can use and share with those outside of the unified structure”. The Government does suggest in the Explanatory Document that it intends to “sensibly align”...
outside tribunals with the centralised system, but offers no explanation of what this might mean.

16. Furthermore, beyond tribunals we have even fewer specifics. We are told simply that the MoJ will strengthen “bilateral agreements” with Government departments\(^\text{29}\) and will be “working closely” with parties across the administrative justice system\(^\text{30}\). Some of these parties have already expressed their confusion over the new arrangements.\(^\text{31}\) Indeed the Lords Committee explicitly calls for the MoJ to “produce an unequivocal statement about how each of the tribunals, ombudsmen and alternative dispute resolution fora currently included in the AJTC’s remit […] across the whole of the administrative justice system will be covered after abolition.”\(^\text{32}\) The Government’s apparent reticence to focus on administrative justice beyond the courts and tribunals is evidenced by its continued failure to respond to the Law Commission’s *Public Services Ombudsmen* report published in July 2011.\(^\text{33}\)

17. In terms of coverage across the United Kingdom, under present arrangements the AJTC’s structure of council and committees allows for consideration of the United Kingdom across and within England, Scotland, and Wales. Under the proposed arrangements, Scotland and Wales will retain their committees on a “temporary non-statutory” basis.\(^\text{34}\) Hence the system will become even more fragmented than it already is. The Scottish and Welsh Committees will be free to continue giving advice to the devolved administrations, whereas Whitehall will be deprived of advice, never mind independent advice, about UK-wide bodies as well as bodies in England.

**B. Independent input**

18. As the PASC report has emphasised “oversight by an entity independent from Government […] should be continued in some form”\(^\text{35}\).

19. In the past, the Government has benefited from the AJTC’s informed, independent commentary. Two clear examples are (i) its advice on fitness to practice appeals when the Government decided not to proceed with an Office

\(^{29}\) *Ibid*, 7.9.

\(^{30}\) PASC Report, [39].

\(^{31}\) Lords Committee Report, 28-29.

\(^{32}\) *Ibid*, 32.


\(^{34}\) Explanatory Document, 9.10.

\(^{35}\) PASC Report, 45.
of Health Professions Adjudicator, and (ii) its advice on changing the powers of School Exclusion Appeal Panels to School Exclusion Review Panels in the Education Act 2011.

20. In recognition of these virtues, the Government has said that it will draw upon independent advice “where appropriate”\(^{36}\) and that it will hold “targeted policy sessions with academics, representative groups and a wide network of interested parties on priority issues”. We welcome these moves, but consider these assertions vague and ultimately inadequate. First, there is no plan to have ongoing independent input or endorsement. Second, there are no concrete plans to commission independent reviews or research. Thirdly, there is no sense in which the independent consultants or experts will be allowed to set their own agenda, with the advisory groups likely being used in a discrete, ad hoc and heavily controlled manner.

21. Moreover, our confidence in the Government’s ability to recognise when independent input would be valuable is undermined by its creative interpretations of the terms ‘independence’ and ‘accountability’. Turning first to ‘independence’, the Government emphasises, in the Strategic Work Programme that “the independence of the tribunals system ensures that tribunal members and their administrative support systems are sufficiently removed from decision makers”\(^{37}\). The Lords Committee, by contrast, recognises that the HMCTS has “a vested interest”\(^{38}\), and in the Explanatory Document, the Government itself recognises that it is “ultimately accountable” for the HMCTS as an executive agency of the MoJ. Turning to the second, the term ‘accountability’, is equated with ministerial accountability to Parliament in the Explanatory Document.\(^{39}\) This is an unduly narrow conception of the term. It is at odds not only with the ethos of administrative justice, but also with the need for oversight that is independent from and complementary to the democratic machinery provided in Parliamentary politics.

C. Administrative Justice Advisory Group (AJAG)

22. With all due respect for the effort, we believe the Advisory Group is a poorly planned afterthought. We note the failure to finalise membership and terms of

\(^{36}\) Explanatory Document, 7.16.

\(^{37}\) Strategic Work Programme, [34].

\(^{38}\) Lords Committee Report, 24.

\(^{39}\) Explanatory Document, 7.16 (iv).
As such, it is no surprise that the Lords Committee cast significant doubts over the Group’s likely comprehensiveness and effectiveness.\textsuperscript{41}

23. We believe that we have inadequate information to judge the effectiveness of the Group, but what we have seen suggests it would be ineffective. Its suitability can be judged by its capacity on the one hand, and the likely weight to be given to its conclusions on the other. It fares poorly on both measures.

24. As to scope, as the Lords Committee put it, we simply “do not know if its coverage will be as comprehensive as the AJTC”\textsuperscript{42}. The AJTC is composed of prominent experts assisted by a busy secretariat. It meets monthly and releases regular reports and responses to consultations. The membership of the AJAG, by contrast, has not been finalised\textsuperscript{43} and it is planned that it will meet only twice a year.\textsuperscript{44} While we welcome the likely participation of the very important organisations listed as potential members of this group (e.g. CAB, certain national campaigning organisations), we view their role as ultimately complementary to, rather than a replacement for, publicly appointed officials having institutional independence from Government, such as that possessed by the Council on Tribunals before and AJTC now. The expertise held by those officials, as well as their networks for gathering information, has been crucial for the operation of the administrative justice system. In addition, we suggest that the AJAG will have only limited continuity and will likely only be able to contribute advice in the very limited areas that the MoJ requests advice. Far from being independent, it will be a heavily controlled advisory body.

25. As to the weight to be given to the Group’s output, the Lords Committee recognised that it would have a difficult time replacing the AJTC as it has “yet to gain the respect and influence that the AJTC has accumulated.”\textsuperscript{45} We go further in stating that it is unlikely that the AJAG ever will gain such respect and influence. The AJTC members are publicly appointed officials, with national profiles, and expertise in the field of administrative justice. Profile, appointment, and expertise were the three elements that gave their conclusions authority and weight: we believe that the AJAG will offer a poor replacement for each. There is also a real threat that its conclusions may be stigmatised as the submissions of partisan campaign groups or even busybodies. Further, we do not know whether the Group’s advice will be published, or to be regarded

\textsuperscript{40} Strategic Work Programme, [40].
\textsuperscript{41} Lords Committee Report, 18.
\textsuperscript{42} Ibid, 25.
\textsuperscript{43} Strategic Work Programme, [40].
\textsuperscript{44} Ibid, 25.
\textsuperscript{45} Lords Committee Report, 18.
as ‘official’ in any way, unlike the AJTC which publishes its work though its own website.

26. Finally, no verifiable assurance has been given that the Group’s secretariat, to be “resourced from within the MoJ’s Justice Policy Group (JPG)”\textsuperscript{46}, will not be under constant pressure to reallocate resources to what are perceived to be higher priority areas. Unlike the AJTC, there is no separate institutional identity that implies a measure of allocative ring-fencing, nor will there be, in any obvious way, transparency in funding provision that outside observers can monitor.

V. Resources and expertise to carry out the AJTC’s functions

27. Last year the PASC asked for information on “the number, turnover and expertise of the civil servants who would become responsible for taking on the AJTC’s functions”\textsuperscript{47}, and for “verifiable assurances”\textsuperscript{48} of staffing plans. This information has not been provided.

A. Resources

28. The Government has said, in oral evidence to the PASC, that they have a team of 12 civil servants working on administrative justice, and that that team was due to expand.\textsuperscript{49} However, recent reports and statements are completely silent on the figures. There has been no confirmation or update about the arrangements.

29. In terms of turnover, we are informed simply that staff will be “deployed flexibly according to the demands of the work” and that resources will be prioritised “to meet departmental priorities”\textsuperscript{50}. This not only fails to supply confidence on the matter, but even implies that staffing arrangements will be vulnerable to redeployment. As the PASC report last year recognised, “the MoJ’s thinking and decisions will inevitably be constrained by the need to reflect Government policy and budgetary constraints.”\textsuperscript{51}

B. Expertise

\textsuperscript{46} Explanatory Document, 7.15.
\textsuperscript{47} PASC Report, 35.
\textsuperscript{48} Ibid, 35.
\textsuperscript{49} PASC Report, Ev 13.
\textsuperscript{50} Explanatory Document, 7.6.
\textsuperscript{51} PASC Report, 55.
30. In a recent response, the MoJ designated administrative justice a “non-specialist area of policy”. With respect, we consider this view to be misguided. It also suggests that the AJTC membership may be replaced with personnel having no particular training or expertise in this very important and complex aspect of the justice system. By contrast, AJTC members have the status, networks and experience described above. They offer a breadth and depth of knowledge, ‘institutional memory’ and networks that cannot easily be replaced. There are no specifics proposals for replacement, and as we have shown the AJAG could not possibly provide it.

VI. The likely accuracy of the Government’s estimate of cost savings

31. Last year’s PASC report doubted the Government’s estimate of cost savings for two main reasons – an assumption, and an underestimate. The assumption was that “the AJTC would not be required to reduce costs and improve efficiency like other public bodies”; the underestimate concerned the “full cost of carrying out these functions within the MoJ.” The Government has since revised down its estimates of savings to a figure of £0.8 million over two years, which we welcome. Yet we should recall that the overall budget for total public expenditure in that same period is £1.4 trillion. The proposed savings are infinitesimal.

32. However, we have a more fundamental objection to the estimate that remains unanswered and currently unanswerable – 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.

33. The only assurance we have as to accuracy is the assertion that “the MoJ does not consider there to be any additional cost”. With respect, it has not demonstrated this. The Government claims that staff will be drawn from

---

53 PASC Report, 51.
54 Ibid.
55 Explanatory Document, 7.16 (iii).
across the MoJ, and from across disciplines.\footnote{Explanatory Document, 7.16 (iii).} However it must ensure there is “sufficient and appropriate provision”\footnote{PASC Report, 54.} to carry out the AJTC’s previous functions. If so it will have to enlarge its team and bring in proper expertise, and this will entail additional expenditure.

34. The Government explicitly commits to “work with staff to seek redeployment opportunities within the MoJ or in other Government departments”\footnote{Explanatory Document, 7.6 (iii).}. Yet as the PASC explained “if staff from AJTC were redeployed within the MoJ, savings in the MoJ budget would not necessarily be a net saving to the taxpayer”\footnote{PASC Report, 50.}. Only the costs of redundancy have been estimated in the Explanatory Document.\footnote{Explanatory Document, 7.16 (iii).}

35. There are notable omissions as well. There is no indication of a MoJ commitment to spending on, for instance, commissioning independent research, or consulting with tribunal user groups.

36. We understand and do not question the drive for economies. But neither can it be ignored that what is proposed is to remove an institution described by Andrew Leggatt as “the hub of the wheel of administrative justice”\footnote{Legatt Report, 7.45-7.51.} from the administrative justice system for, at best, “very minor financial gains”\footnote{Lords Committee Report, 33.}. With a budget of £1m a year, it has been responsible for keeping “an enormous system under review”\footnote{PASC Report, 5.}. That is excellent value for money. And as the PASC report last year recognised, the real savings lie in improving initial decision-making and current redress arrangements.\footnote{Ibid, 52.} The corollary of this, of course, is that there are potential costs to the abolition of the AJTC. Improved initial decision-making is not only good for citizens, it also reduces the costs of the redress system.

37. As such, we would remind the committee that proportionality as a principle in administrative justice works not only in the direction of monetary savings, but also in the opposite direction of preserving good value for money in the protection of administrative justice. In that sense, a cut can be ‘disproportionate’ just as much as a wasteful expenditure can. In this case, the
threat to administrative justice, compared with the paltry gains in efficiency (themselves doubtful) is, in our view, entirely disproportionate.

VII. Conclusion

38. In conclusion, abolishing the AJTC would be very ill-advised. By pre-judging the outcome, the Government has failed to carry out the research, provide the figures, and properly make provision for administrative justice after the abolition of the AJTC.

39. As the Lords Committee put it “given the strength of the opposition expressed and the very minor financial gains anticipated, the Committee was surprised that MoJ did not present its case more robustly”. The Minister should “articulate the perceived advantages more strongly and present a well-argued case to counter the objections made”\textsuperscript{66}. In our view that argument is still lacking, and without substantial further research, is not available.

\textit{February 2013}

\textsuperscript{66} Lords Committee Report, 33.
Written evidence from Mind

Mind is the leading mental health charity in England and Wales.

We provide advice and support to empower anyone experiencing a mental health problem. We campaign to improve services, raise awareness and promote understanding.

We work in partnership with over 160 independent local Minds to provide a range of services tailored to the needs of their local community. Services on offer include supported housing, crisis help lines, drop-in centres, counselling, befriending, advocacy, and employment and training schemes. Last year our network provided direct support to over 285,000 people.

Mind wants to ensure that people with mental health problems have their voices heard, and are treated fairly, positively and with respect.

Summary

Mind has been an invitee to the Administrative Justice Advisory Group. Our view is that this group is a useful stakeholder forum but cannot currently provide an independent and detailed overview of the effectiveness and fairness of the administrative justice system from the point of view of users.

Introduction

1. As Mind has been a member of the Administrative Justice Advisory Group and previously attended Administrative Justice and Tribunals Council (ATJC) meetings for mental health tribunal stakeholders, we are responding to the call for evidence by the Justice Committee on 30 January 2013.

2. People with mental health problems can experience particular barriers in the use of tribunals and courts. In 2010, the Ministry of Justice itself commissioned a series of research papers that identified key problems encountered by people with mental health conditions and learning disabilities when using the courts. Additionally, people with mental health problems are more likely than the general population to be reliant on health and social care services and so will have recourse to the health, and social care complaints procedures. Judicial review is sometimes the only way for people with mental health problems to hold public bodies to account for decisions about detention, treatment or allocation of social or health care.

3. People detained under the Mental Health Act 1983 have the right of appeal to the First-tier Tribunal. We welcomed the publication by the Administrative Justice and Tribunals Council together with the Care Quality Commission (CQC) of the first pilot

study of appellants’ experiences of appeals.\(^2\) This has resulted in some helpful adjustments including provision of a patient leaflet to explain the pre-tribunal medical examination and customer feedback monitoring.

4. Mind therefore considers it is particularly important that there should continue to be provision for the independent oversight and monitoring of administrative justice system to ensure that it is fair and effective for users.

**The role of the Administrative Justice Advisory Group**

5. Mind is one of a number of organisations invited to attend meetings of the Administrative Justice Advisory Group. We accepted a written invitation as we welcome opportunities to share our concerns and to learn about future justice strategy in order to ensure that the interests of our beneficiaries are protected. Fairness and ‘right time first’ decisions in the administrative justice system are particularly a heightened concern for Mind at a time when legal aid is to be withdrawn for areas of law such as welfare benefits, education and employment as this will make it significantly harder for people to access advice.

6. We are unaware of any public invitation or public consultation exercise to determine the membership of the group but we understand from the information distributed by the Ministry of Justice that membership of the group is not fixed. As it provides an opportunity to share views of user experience, the group suggested other organisations that may like to attend and invitations appear to have been extended to those bodies as well.

7. The Group met twice last year. Representatives from the Ministry of Justice have explained aspects of their administrative justice strategy and their department’s priorities to the representatives of the participating organisations. Participants in turn have raised a range of concerns about administrative justice arising from their particular organisation’s expertise and experience.

8. The terms of reference of the group prepared by the Ministry as circulated to Mind are attached. 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.

*February 2013*

\(^2\) Patients’ Experiences of First-tier tribunal (Mental Health) March 2011