ajtc Administrative Justice & Tribunals Council
Promoting fairness and redress

Future Oversight of Administrative Justice

The AJTC's Response to the Justice Committee Report

JULY 2013

Contents

Summary and Recommendations

Purpose of this Response

The Justice Committee's Report of March 2013 examined the work of the AJTC and recommended that the Government should reconsider its decision to abolish the Council. A year earlier, in February 2012, the Public Administration Select Committee had observed that the AJTC is charged with keeping an enormous system under review, with a role of "vital national importance". More recently, in May 2013, the Secondary Legislation Scrutiny Committee of the House of Lords concluded that "the case for the complete abolition of the AJTC is not made".

Despite these highly critical reports, and an overwhelmingly negative response to the consultation exercise, the Government has resolved to proceed with the abolition process. After more than three years of uncertainty, frustration and fragility, the political reality is that final Parliamentary approval for abolition will result in the imminent demise of the AJTC.

How will the Administrative Justice system be overseen without the AJTC to perform that role as an independent statutory body? How will users' needs be identified and represented? How will the accessibility, fairness and efficiency of the system be assessed? Where will proposals for its improvement come from?

This Response to the Justice Committee's Report will be AJTC's last report. It addresses these and similar questions, but cannot supply all the answers. Although much could still be said and remains relevant, the Response does not seek to re-open arguments about abolition, survival or modification. Instead, it has been written on the explicit assumption that there will no longer be an AJTC or any other statutory body to provide independent scrutiny of the Administrative Justice system. Its focus is future oversight in the absence of the AJTC.

Without a dedicated body, it seems inevitable that Parliament – notably relying upon the Justice Committee – will wish and need to take much closer interest than hitherto in a system which impacts directly on relationships between State and Citizen and which affects such large numbers of people. The Response therefore treats the Justice Committee as its primary audience, but it also seeks to provide a focus and reference point for the Public Administration Select Committee (PASC) and other parliamentary bodies, as they undertake future scrutiny of policies and actions in the field of administrative justice.

We also recognise that various bodies outside Parliament may become engaged – whether regularly or occasionally – in addressing strengths and weaknesses in the system and in bringing forward proposals for its improvement. This may include the MoJ's new Administrative Justice Advisory Group, the proposed non-statutory Advisory Committees for Scotland and Wales, academics, think tanks, organisations such as the Ombudsman Association and other interest groups. Although we are highly sceptical about MoJ's claim that it, with HMCTS, can exercise an oversight function as such, we hope that Ministers and officials will also find this Response to be useful as they discharge the various

responsibilities that they do have. The Scottish and Welsh Governments may also be able to use this Response to inform their tribunal reforms and wider programmes, and it may also be of use and interest to the Scottish Parliament and the Welsh Assembly.

For both the Justice Committee and others, this Response therefore draws upon AJTC's own work in recent years, and our longer corporate memory as successor to the Council on Tribunals, to inform and assist future scrutiny whatever its source. It also records the various commitments which the Ministry of Justice has made at different stages of the abolition process, not least in its own Strategic Work Programme. As well as making some specific recommendations, we have tried to draw together raw materials as a legacy which will be a positive resource for both Parliamentary bodies and others seeking to improve the quality of governmental decision-making and the arrangements for those seeking justice when things appear to have gone wrong.

Fundamentals

The Tribunals, Courts and Enforcement Act 2007 (TCE Act) gave statutory recognition to three important features which it is universally agreed must survive AJTC's own demise:

- the preservation of the Administrative Justice system as a **cohesive and integrated system which links together original decision-making by government, judicial and non-judicial redress mechanisms in a coherent and holistic way**;
- the importance of understanding and responding to the **needs of the users** of this system;
- the need – for so long as such remains the case – for oversight arrangements to reflect the **operation of this system across the entirety of Great Britain**, recognising distinctive features in Scotland and Wales.

These three fundamental features – which must remain at the heart of any future oversight arrangements – need brief elaboration.

A cohesive and integrated system

The importance of a systematic approach to administrative justice – with first-instance decision-making learning from appeal, complaint and other redress mechanisms – cannot be over-stated. There is still a long way to go to make reality of the *"Right First Time"* agenda which AJTC has championed. Likewise, it is of the utmost importance that the State should provide for a fair, efficient and effective administrative justice system to correct the mistakes, misunderstandings or poor judgements of officials. As PASC noted, the subject of administrative justice "may seem obscure and technical", but is greatly significant in that it "touches upon the lives, the standards of living, and rights of millions of citizens each year". Future oversight arrangements must engage with the system as a whole and – in the face of widespread "silo" pressures – must strive to preserve its cohesiveness.

This means that the panoramic perspective across the system as a whole must not be lost. In particular – oversight must extend to first-

instance decision-making, to non-HMCTS tribunals, to Ombudsman and similar complaint and redress schemes and to the inter-relationships between all the various institutions.

Focus on Users

The need for all public services to be focused primarily on the needs of their users – whether as patients, passengers, local residents, tenants, taxpayers, claimants or litigants – is accepted across the political spectrum. But the rhetoric often falls short when bewildered individuals have to deal with complex rules and monolithic bureaucracies. The machinery of justice can likewise be disconcerting, expensive, slow and inaccessible. AJTC has consistently championed users' needs, focusing particularly on maximising access and customer satisfaction and minimising cost, delay and complexity. As most AJTC visit reports reveal, credit must be given to the efforts which tribunals and ombudsmen schemes make to secure a user-friendly, enabling and empathetic approach. But it is so easy for any system to put its own convenience or interests first unless pressure is constantly maintained for a consciously user-driven culture. The MoJ has now stated that it "recognises the need to place users of the system at the centre of our strategy". **Those involved in future oversight of the system should ensure that this commitment becomes a reality and that this prioritisation is delivered in practice.**

Constitutional considerations

The territorial jurisdiction of the Administrative Justice system throughout Great Britain needs to be properly reflected in future scrutiny arrangements.

The abolition of the AJTC removes the only structure associated with government which is capable of achieving a panoramic appraisal of the entire administrative justice and tribunal landscape of Great Britain. The task therefore of ensuring effective scrutiny will be many times more difficult in future than it has been. Constitutional changes in the Scottish and Welsh devolution settlements affect the rest of Great Britain as much as they affect those jurisdictions. What was a fragmented system cannot but fragment further in the absence of a pan-GB perspective, provided by an AJTC or otherwise. With the abolition of the AJTC there is no proposal for it to be provided otherwise. It will be first and foremost for the UK Government to determine whether it perceives that as an issue for the future of the UK.

Nor will it be easy to ensure that cross-border elements of the justice system remain coordinated with a changing landscape of Scottish and Welsh devolution. Original decision-making on such subjects as social security, immigration and tax is reserved to the UK level. A bifurcated tribunals system in Scotland means that there is at the least an enhanced risk of differential approaches to administrative justice and tribunal procedures. This if nothing else will lead to the contrary of the Leggatt vision of consistency.

There are current moves to bring more tribunals into the distinctive Scottish legal system. Whatever the outcome, the 2014 Referendum is likely to lead to further changes. Welsh tribunals are still insufficiently recognised as part of an independent justice system and it remains to be seen how aspirations for a Welsh justice system may take shape.

These various issues matter beyond Scottish and Welsh borders – they fundamentally affect Administrative Justice across Great Britain as a whole, and MoJ (despite, we regret to say, not being well-informed) will have continuing responsibility for administrative justice issues in Scotland and Wales and for related "cross-border" issues.

It remains to be seen how the non-statutory successor bodies to the AJTC's Scottish and Welsh Committees will be established and operate. Nor is the territorial scope of the new Administrative Justice Advisory Group yet clear.

At the very least, in this confused environment there will be an increasing risk of fragmentation and a pressing need for co-ordination.

Principles

The AJTC has worked hard to establish a principled approach to its oversight responsibilities and, after extensive consultation, established seven Principles to underpin the administrative justice system (applying both to first-instance decision makers and to redress providers). Although the MoJ inexplicably appears to take a narrower view, these Principles remain wholly valid and important and should form the basis of criteria for any future assessment of the system:

i) Users and their interests should be central to the system. They should necessarily be treated with fairness and respect at all times.

ii) The system should enable people to challenge decisions and seek redress. Procedures for these purposes should be independent, open and appropriate for the matter concerned.

iii) Government actors should keep people fully informed and empowered throughout a dispute to enable as speedy and comprehensive a resolution as possible.

iv) The system should lead to well-reasoned, lawful and timely outcomes.

v) The system should be coherent and consistent.

vi) It should work proportionately and efficiently.

vii) Government actors should adopt the highest standards of behaviour, seek to learn from experience and constantly improve.

Barriers to Justice

The last fundamental for any form of future oversight arrangements is the need to recognise the risks of redress being effectively put entirely beyond the reach of numerous citizens. This has important implications for the health of a democratic and stable society which attaches weight to accountability under the Rule of Law – and especially so in the case of accountability which can be duly enforced against government. Cutbacks in the availability of advice and legal aid and the introduction of fees for Immigration and Employment Tribunals are likely to act as even greater barriers and disincentives to redress than restrictions in the availability of judicial review. There are especially disturbing signs that MoJ explicitly sees the use of fees as a mechanism to reduce demand on the tribunals system.

Those involved in future oversight of the system will need to probe deeply whether access to the justice system and the requirements of fairness are being maintained in the face of these pressures. This illustrates vividly the need for a degree of independence in the oversight arrangements. The government cannot simultaneously safeguard taxpayers' interests and assess the impact from the users' perspective. This dilemma is even more acute in a situation where (as in most tribunal cases) disputes are between citizen and government and where government funds and administers the redress facilities which exist to vindicate citizens' rights and to hold it to account.

There is an inevitable risk that those who have access to the levers of power may yield to the temptation to use them to exclude or restrict challenges. And even if that temptation on occasion is resisted there will always be the suspicion that it may not be resisted on others. Effective oversight is necessary both to ensure that temptation is resisted and also to create confidence amongst citizens that it will be.

Specific issues

Beyond the fundamentals outlined above, this Response highlights a series of more specific and current issues that will affect future oversight, including commentary on the MoJ's own plans and the developing role of its new Advisory Group.

MoJ Strategic Work Programme

MoJ's Strategic Work Programme (SWP) sets out a programme of work on administrative justice for the years until 2016. This, together with the exploratory document to the abolition order, contained various commitments which, although mostly expressed in general terms, will be important. They include:

- The strengthening of "bi-lateral arrangements" between the MoJ and other government departments and agencies whose operations impact upon administrative justice;
- Working with other government departments to ensure that tribunals which remain outside of the centralised system will "sensibly align" with the HMCTS tribunals;
- Examining the funding arrangements for tribunals, including by considering "whether they best reflect the total cost to Government of decision-making and provide the right incentives to use the system efficiently";
- Seeking to improve initial decision-making across departments, notably through working to secure "better end-to-end performance information" and through increasing "the quality and usefulness of feedback to departments from the onward appeal processes";
- Gathering "better information" on the needs and interests of the users of the administrative justice and tribunals system, through assessment of "targeted surveys, user input...and complaints", complete with reference to the findings of user groups;

- Taking account of the views of service users, including those in vulnerable groups; and
- Developing a strategic, UK-wide approach to the administrative justice system.

Despite the limitations, it will important for the Justice Committee and others to assess the extent to which the MoJ is meeting these aspirations in practice. Successive Strategies and Plans will also need to be examined to ensure they meet the underlying needs of users and promote improvements to the system for the benefit of its users.

Administrative Justice Advisory Group

The MoJ has attached much weight to the *Administrative Justice Advisory Group* (AJAG) which it has established to "play a dynamic role in helping to address issues for users". The scepticism of the AJTC towards these arrangements has been echoed in Parliament with such descriptions as a "poorly planned afterthought" and a "pawn of the Department".

Despite the reservations, this Response acknowledges that AJAG will be the main forum for future identification and discussion of user concerns. We hope that AJAG, especially with an independent chairman, will be able to work robustly. This Response identifies ways to improve AJAG's operations. These include:

- AJAG should meet more often than twice a year, and ideally at least every quarter at the discretion of its independent Chair;
- Minutes of AJAG meetings should be published;
- MoJ's Annual Reports on the administrative justice system to PASC and the Justice Committee should routinely include an AJAG contribution;
- MoJ should routinely seek AJAG's views on policy and legislative proposals (including those from other government departments) likely to impact upon areas of administrative justice;
- MoJ should publish an explanation of how AJAG's work will be used to guide the development of inter-departmental governance arrangements;
- Members of the AJAG should insist on having a real influence over their own agenda and proactively raise aspects of the system where they have concerns; and
- MoJ should provide a research budget and financial support to AJAG members to enable proper fulfilment of their responsibilities.

We also hope that both the Justice Committee and PASC will take an interest in AJAG and encourage it to develop a credible and genuinely influential voice.

Information for Users

Ensuring the sufficient accessibility and transparency of information, as well as its practical utility, should be key government targets.

Although we are wary of a situation where the Government itself is the predominant source of information, we welcome MoJ's commitment to seek improvements in signposting. Advice must be genuinely helpful and provide appropriate signposting to external agencies. But both Government and Parliament need to be aware of potential conflicts of interest given that people are seeking help to challenge governmental decisions.

The SWP commits MoJ to a communications strategy "aimed at the user rather than reflective of the way [in which] government works", as part of which the MoJ will seek to ensure the provision of "accurate, detailed information for those that need it". We urge Select Committees and others to look closely at the communications strategy and to monitor closely how this pledge is acted upon in practice.

First-instance decision-making and Right First Time

AJTC has long pressed for improvements to initial decision-making by government departments so as to reduce burdens placed on tribunals, ombudsmen and other dispute-resolution bodies. "Success" rates in some areas are so high as to suggest something significantly wrong with the quality of decision-making.

A *Right First Time* approach has obvious benefits to citizens and the potential to save very large sums of public money. Our detailed recommendations in this area were set out in our 2011 report and have been largely endorsed by PASC. This is an issue of pivotal importance to the administrative justice system, but it is disappointing that neither MoJ, nor most other departments, have so far taken our recommendations with sufficient seriousness. If too much emphasis is placed on simply enabling tribunals to handle inexorable demand, at the expense of seeking improvements in government decision-making, the problems are being targeted from the wrong end.

We welcome the incorporation of the 'Right First Time' agenda into the SWP, which includes the objective of investing in improved initial decision-making, not least through improved data assessment. We are confident that PASC will wish to look closely at what practical steps are being taken to meet this objective in practice and we hope that others will also be vigilant here.

One particular aspect, which has not so far been developed, is the scope for government departments to be offered financial incentives to get their decisions correct in the first instance. As we argued in 2011, there are opportunities – so far not even explored – for introducing the 'polluter pays' principle, so that a governmental body whose error has led to an adverse tribunal decision must pay more directly towards the costs.

The Government has been more positive towards the value of feedback from tribunals as a way to improve original decision-making. The SWP includes an objective to ensure that sufficient information "is made available to enable improvements in the quality" of administration. But feedback must be both given and received. The increasing rarity – to the point of exceptionality – of DWP representatives attending social security appeal hearings does not inspire confidence. The forthcoming MoJ pilot of "new approaches for providing enhanced feedback from tribunals" will need close oversight.

The distinctive nature of tribunals

Tribunals play a hugely important – though not exclusive – role in the Administrative Justice system. At the time of the merger of the Courts and Tribunals Services the AJTC expressed concern that this, and other pressures, would threaten the distinctive characteristics of tribunals - notably user-friendliness, simplicity of proceedings and investigative, enabling procedures. We also feared that tribunal hearings would be held in unsuitable court buildings and a risk of HMCTS prioritising court business over tribunal affairs. Our concerns can be summed up as a fear of "Judicialisation".

It is too soon to know whether our concerns were well-founded. But continuing scrutiny of tribunals and HMCTS should include assessment of how the distinctive nature of tribunals is being maintained.

HMCTS

This Response remains deeply sceptical that HMCTS – even ignoring its lack of independence – can undertake a meaningful oversight role as it is fundamentally providing services as an administrator of tribunals. It cannot oversee itself. Constitutionally, it must not oversee the judiciary. And it can have no oversight role at all for all those parts of the system where it has no responsibilities. Further doubts are raised if – as appears to be in prospect - future reform of court and tribunal services may extend to a significant degree of out-sourcing or other fundamental changes of status.

The reality must be that it is HMCTS itself which must be a major *subject* of future oversight as a very important player in the system. This Response illustrates this point by raising questions about HMCTS performance and reporting. The SWP notes that tribunal volumes are due to rise after 2013, and the staggering figure of 807,000 cases is now forecast for the First-tier (Social Security and Child Support) Chamber alone for 2015-16. Although the level of disposals has increased every year since 2007/08, there must be serious concerns as to the ability of the system to cope with such volumes. Recent AJTC visits have revealed worrying delays in some cases, including a period of 544 days in one case between the date on which the appeal was lodged with the DWP and the date of the tribunal hearing, and periods of 417 days and 357 days in other cases.

The challenges of oversight are exacerbated by recent reductions in meaningful information about HMCTS performance, particularly in comparison with the quality and detail of statistics provided by the former Tribunals Service. Previously published performance indicators were of sufficient clarity as to provide (in combination with the percentage figures cited with them) a reasonable insight into the state of tribunals administration. By contrast, the most recent HMCTS Annual Report provides performance indicators for only three Chambers of the First-tier Tribunal) and for Employment Tribunals. Even here, no performance target citations were available, whilst the indicators themselves referred only to time taken before final disposal and not to any other factors.

We hope that the Justice Committee will consider the adequacy and utility of the statistical performance data provided by HMCTS and MoJ to ensure sufficient transparency and accountability.

Non-HMCTS Tribunals

The issue of how the tribunals operating outside of the HMCTS system are to be overseen or monitored after AJTC abolition has been a key question throughout the parliamentary scrutiny process. The SLSC made increasingly clear that it was concerned about this matter. The Justice Committee also noted that the capacity of the MoJ to offer oversight of non-HMCTS bodies is "highly questionable". The non-HMCTS tribunals include some which have very significant impact – such as school admission appeal and exclusion review panels which have attracted considerable AJTC attention.

MoJ has promised "light-touch" review, but it is not at all clear how this will operate in practice and important issues of principle may well slip under the radar. The MoJ has stated that it will carry out visits to selected non-HMCTS bodies, although it will not have AJTC's statutory visiting rights. Nonetheless, we believe this to be a commitment on which the MoJ should be held to account, since visits provide an important means to assess operational workings, efficiency and user-friendliness.

MoJ has accepted that its annual reporting to Parliament will include comment on "the position of those tribunals outside of the unified system". We suggest that this provides the Justice and relevant departmental Committees with an annual opportunity to secure from the MoJ particular details about the non-HMCTS tribunals, and especially those making a significant impact upon users.

Ombudsmen/complaint handing

The AJTC's scrutiny of both the judicial and non-judicial aspects of the system means that we have been able to provide joined-up thinking and a holistic view on the ways in which fundamentally different but complementary components of administrative justice fit together. The perspective of the three Ombudsmen (Parliamentary and Health Service Ombudsman, Scottish Public Services Ombudsman and Public Services Ombudsman for Wales) as members of the AJTC and its Committees has been a valuable complement to our work.

We have serious doubts as to whether the MoJ has a clear understanding of the way Ombudsmen impact upon the system and of how they relate to other bodies within it. Ombudsmen schemes are not judicial forums adjudicating on legal entitlements and are not under the Ministry's sponsorship. Nor do they provide redress or act as alternatives to tribunals.

It is of concern that the Law Commission's report on the role of Public Services Ombudsmen has not yet received any governmental response. We welcome the current PASC Inquiries into the Parliamentary and Health Service Ombudsman and complaints-handling schemes and we have recently submitted evidence to both inquiries. We pointed out the need to raise awareness and to think through the knock-on effect on the Ombudsman of changes (such as mandatory reconsideration of welfare claims) which delay or deny access to tribunals.

MoJ has stated that it will work closely with the Cabinet Office on ombudsman issues and will "strengthen links with the PHSO herself".

What is not clear, however, is how the MoJ will advance this work. PASC will no doubt wish to keep under review the extent to which the MoJ actively engages with complaints-handling and ombudsman concerns in fulfilling the goals of the SWP.

Fragmented Oversight?

To conclude, the abolition of the AJTC breaks the vision of Sir Andrew Leggatt whose Review of Tribunals recommended a wider oversight role encapsulated in the expression 'the hub of the wheel of administrative justice'. He understood that for the user who is aggrieved with the delivery of public services everything is – or should be – connected. The user does not easily understand a system in which some disputes go to tribunals and some go to ombudsmen, and that they have different arrangements about how they are accessed, what they may deal with and the type of remedy which could be provided. Add to this the devolution settlement which means that in different parts of the UK services will be provided by different public bodies and an administrative justice system exists in which the components of policy making, law-making, delivery and oversight are fragmented. The only body with a panoramic overview of this fragmented system has been the AJTC which could connect the different types of remedy for public services with the search for ways to get it right first time, in part by learning the lessons from remedying disputes.

A central challenge after the AJTC's abolition will be to avoid, or at least minimise, fragmentation of oversight arrangements by making connections between the different parts of (a) government conducting policy making and operational roles and (b) the legislatures performing law-making and oversight functions without the prompting and advice which the AJTC has provided.

Overall Recommendations

- Despite the absence of the AJTC as a dedicated and independent statutory body, it is vital that there should be continuing and rigorous oversight of the Administrative Justice system and of governmental initiatives impacting upon the system and its users.
- The UK Parliament, primarily through its Justice and Public Administration Select Committees, is likely to play a key role in such scrutiny.
- Other bodies are well-placed to play a role, whether regularly or occasionally. This may include the Scottish Parliament and National Assembly for Wales, the proposed non-statutory advisory committees for Scotland and Wales, academics, think tanks, organisations such as the Ombudsman Association and other interest groups.
- Despite many limitations, the MoJ's new Administrative Justice Advisory Group has a particular potential to make a difference. Its independent Chair is urged to take this Response, including the improvements to AJAG itself suggested above, as a starting-point to enable the Group to provide credible, influential and effective scrutiny and robust challenge.
- Any future oversight should safeguard the fundamentals of the system, notably:
  - the preservation of the Administrative Justice system as a cohesive and integrated system which links together original decision-making by government, judicial and non-judicial redress mechanisms in a coherent and holistic way;
  - the importance of understanding and responding to the needs of the users of this system;
  - the need – for so long as such remains the case – for oversight arrangements to reflect the operation of this system across the entirety of Great Britain, recognising distinctive features in Scotland and Wales.
- Oversight should also adopt the AJTC's Principles for Administrative Justice as the basis of criteria for assessment.
- There will be an on-going need to assess the extent to which the Ministry of Justice is meeting the aspirations and commitments which it has given in its Strategic Work Programme.
- There is a particular need to keep under careful review the extent to which legal aid and advice cutbacks, the use of fees, and restrictions on the exercise of appeal rights are cumulatively imposing barriers to administrative justice.
- Those involved in oversight should especially carry forward and tackle the specific issues elaborated in this Response, notably:
  - the importance of good quality information and sign-posting;
  - promotion of the 'Right First Time' agenda;
  - the need to safeguard the distinctive nature of tribunals;
  - the need to keep the performance of HMCTS under close review;
  - the need to ensure that non-HMCTS Tribunals, Ombudsman and complaint-handling schemes are kept under review as part of the overall system.

Recommendations to the Justice Select Committee

This Response suggests that the Justice Committee will have a key oversight role to play, not least through annual engagement following the MoJ's yearly reporting to Parliament.

We suggest that the Committee may particularly want to:

- probe whether access to administrative justice, and the requirements of fairness, are being maintained in the face of cost-cutting and other pressures;
- keep under review the extent to which the Ministry of Justice is meeting the aspirations and commitments given – primarily in its Strategic Work Programme and related documents – to defend abolition of AJTC ;
- test what the MoJ is actually doing to "place users of the system at the centre of our strategy";
- look closely at the MoJ's communications strategy and monitor closely how the pledge to ensure the provision of "accurate, detailed information for those that need it" is acted upon in practice; take a close interest in the work, remit and self-sufficiency of the Administrative Justice Advisory Group;
- question how the distinctive features of tribunals are being maintained and on the time taken to dispose of cases;
- scrutinise the work of HMCTS in the field of tribunal management and consider the adequacy and utility of statistical performance data;
- review annually the MoJ's position with regard to non-HMCTS tribunals and seek information from the MoJ about how it is keeping them under review as part of the overall system.

We also suggest that the Committee may wish to undertake specific inquires, for example:

Implementation of the MoJ's Strategic Work Programme

Issues to include:

- progress on building bilateral relationships
- the work of AJAG
- promoting Proportionate Dispute Resolution

Access to justice, fairness and transparency in the unified tribunals

Issues to include:

- Fees
- Appeal rights
- Tribunal transfers
- Tribunal statistics
- User feedback
- Reform of HMCTS

Recommendations to the Public Administration Select Committee

This Response suggests that PASC will also have a key oversight role to play, not least through annual engagement following the MoJ's yearly reporting to Parliament.

We suggest that PASC may particularly want to:

- assess progress made by MoJ in fulfilling its commitments to improve decision-making;
- examine the extent to which the MoJ, DWP and other government departments have developed new and improved approaches for acquiring feedback from tribunals and acting upon it to secure better standards of administration;
- consider how the substance of this Response may inform its current Inquiries into the PHSO and complaint-handling as component parts of the Administrative Justice system; and
- consider how far the MoJ has fulfilled its commitments to engage with Ombudsmen and complaint-handling schemes.

Section One: The Response

1. This is the response of the Administrative Justice and Tribunals Council (AJTC) to the report of the Justice Committee of the House of Commons published on 15th March 2013.[1] The Committee examined the issues relevant to and potentially flowing from the abolition of the AJTC, further to the draft Public Bodies (Abolition of AJTC) Order 2013 – a statutory instrument drawn up under the Public Bodies Act 2011.

2. The Justice Committee urged the Government to reconsider its policy regarding the AJTC's abolition. In particular, it disputed the Government's case that abolition would secure the imperatives of efficiency and effectiveness as required by the Public Bodies Act 2011.[2] In the House of Lords, the Secondary Legislation Scrutiny Committee also concluded that abolition would not meet the conditions of the Act, on the basis that it would lead to a "necessary protection" (within the meaning of s. 8 (2)) being lost.[3]

3. The Justice Committee's March report has been supplemented by a special report of 25th April 2013, which included the Ministry of Justice's (MoJ's) response to the March report.[4] Two other Select Committees have considered the Government's abolition proposals – the Public Administration Select Committee ("PASC") of the House of Commons[5] and the Secondary Legislation Scrutiny Committee ("SLSC") of the House of Lords.[6] The latter of these reported on the draft Order four times in total, a fact remarked upon as being "without precedent".[7]

4. We seek here to comment upon issues which were raised either separately or in combination by all three Committees which have scrutinised the abolition process and corresponding legislation. But we also highlight other issues of particular concern affecting the future oversight of administrative justice policy. Where we comment on a document with an on-line citation, the relevant website address can be found in the appended bibliography.

---

1 *Scrutiny of the draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order* 2013 (Session 2012/13, HC 965, 15/03/2013)

2 *Ibid*, paragraph 25

3 SLSC: 2nd Report of 2013/14 session – *Public Bodies Orders: Public Bodies (Abolition of AJTC) Order 2013* (HL 8, 23/05/2013), paragraph 31

4 Special Report: *Scrutiny of the draft Public Bodies (Abolition of AJTC) Order 2013: Government Response* (Session 2012/13, HC 1119, 25/04/2013)

5 PASC: *Future oversight of administrative justice: the proposed abolition of the Administrative Justice and Tribunals Council* (Session 2010/12, HC 1621, 08/03/2012)

6 SLSC: 25th Report of 2012/13 session - *Draft Public Bodies (Abolition of AJTC) Order 2013* (HL 109, 31/01/2013); 32nd Report of 2012/13 session – *Government Response: Draft Public Bodies (Abolition of AJTC) Order 2013* (HL 146, 14/03/2013); 35th Report of 2012/13 session (HL 160, 26/04/2013); 2nd Report of 2013/14 session (no. 3, above)

7 Lord Goodlad, Chairman of the SLSC, in the oral evidence session of 14/05/2013: Transcript, p. 29

5. At the outset, we would like formally to set on record our sincere thanks to the Justice Committee, the PASC and the SLSC. All three Committees have recognised the significance of the administrative justice system and the contribution played by the AJTC in the scrutiny framework, in making their various reports and recommendations. We should also note that, in the light of the potential issues of significance for the work of other Select Committees which this response raises, it is being copied to those Committees.

Aims of this Response

6. The AJTC makes this Response in the final period of its existence, as the Abolition Order is before Parliament. The political reality is that approval for abolition will have been secured – or be imminent – as this document is published. This Response is not therefore intended to be a re-statement the case for preserving the AJTC. Instead, the focus is on the future oversight of the administrative justice system. Who might play a scrutinising role? How can AJTC help to maximise the effectiveness of such future oversight?

7. Of course, the arguments we made in our previous evidence to all three Select Committees have relevance for future arrangements. The arguments related to the AJTC's position as a Great Britain-wide body which:

   a) exercised independent scrutiny over a key part of the justice system in which central government has a direct interest (both as party to most disputes and as architect and maintainer of the system itself);

   b) maintained a priority focus on the needs of the administrative justice user; and

   c) offered cross-border perspectives on a system complicated by constitutional and devolutionary change.

   Points were also made to the Committees about the MoJ's likely inability to carry out oversight functions to the same extent or with the same degree of specialism as the AJTC, not least recognising how the policy priorities of the Ministry tend to be matters of criminal and civil justice.

8. We were encouraged that the force of these arguments was largely appreciated by all three Select Committees. Their views on these points are matters of public record and need not be rehearsed here, save to note that all three recognised the value of independent oversight of government performance in administrative justice matters,[8] with the SLSC in particular regarding the independence of commentary as part of the 'necessary protection' which would be lost with abolition.[9]

[8] For example, the Justice Committee (no. 1), paragraph 13

[9] No. 3

9. Despite the recommendations of the three separate Committees, and the views of other commentators, the Government has been determined to proceed with the abolition process. This Response therefore proceeds on the assumption that abolition will take effect.

10. The principal rationale of this Response is thus to suggest optimum arrangements for administrative justice oversight in a world without the AJTC. Without a dedicated statutory body, it seems inevitable that Parliament – notably relying upon the Justice Committee – will wish to take a much closer interest than hitherto in a system which impacts directly on relationships between State and Citizen and which affects such large numbers of people. The Response therefore treats the Justice Committee as its primary audience, but it also seeks to provide a focus and reference point for PASC and other parliamentary bodies as they undertake future scrutiny of policies and actions in the field of administrative justice. We also recognise that various bodies outside Parliament may wish or need – whether regularly or occasionally – to identify strengths and weaknesses in the system and to bring forward proposals for its improvement. We are therefore drawing upon our own work in recent years to inform and assist scrutiny, whatever its source.

The concept of administrative justice

11. The Tribunals, Courts and Enforcement Act (TCE Act) 2007 gave statutory recognition to three important features which it is universally agreed must survive AJTC's own demise:

    - the existence of a cohesive and integrated administrative justice system;
    - the importance of understanding and responding to the needs of the users of this system;
    - the need – for so long as such remains the case – to reflect the operation of this system across the entirety of Great Britain, but with its distinctive features in Scotland and Wales.

12. By way of background, the first Annex to this Response explains the AJTC's statutory functions and constitution as established in Schedule 7 to the TCE Act.

13. In summary, the Act provides for the AJTC to offer independent advice to government on improving the administrative justice system in the interests of the millions of citizens who rely upon and use it. User interests have therefore been at the heart of the AJTC's role and central to its outlook.

14. The 'administrative justice system' was defined in the TCE Act 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 decisions".[10]

15. The definition is very wide but also structurally cohesive. Its width means that it encapsulates the *entire means* by which the State exercises discretion in relation to individuals, complete with the processes for doing so and the various dispute-resolution systems which exist for when mistakes or misjudgements are alleged to have occurred. As such it includes within its scope the entire spheres of social security, education and health (amongst others), insofar as the State makes decisions affecting individual rights in these areas. PASC referred to the scale of this as "enormous" and the Justice Committee noted how the number of administrative cases "dwarfs" those of other areas of law.[11] In terms of dispute resolution schemes, the system covers judicial review and related public law proceedings; statutory tribunals; ombudsmen and internal complaint-handling mechanisms.[12]

16. The diversity of dispute resolution provision is an important feature, and there is perhaps more scope and appetite for innovative approaches than elsewhere in the machinery of justice. It includes the judicial means of seeking redress, of which the tribunals are most often used. But non-judicial methods are of equal importance and in some cases of greater utility given the advantages of securing proportionate dispute resolution wherever possible. Internal complaint-handling schemes need to be transparent and well led, fostering a culture in which public bodies seek to learn from mistakes and improve their performances. Ombudsmen as external complaint handlers provide a greater degree of independence and public accountability and are of fundamental importance. The AJTC's membership includes (ex-officio) the Parliamentary and Health Service Ombudsman, whilst some appointed members have particular expertise in and knowledge of the complaint-handling sector. In combination with the work of other AJTC members with knowledge of the tribunals sector in various fields, this provides for a valuable, holistic perspective across the entirety of administrative justice.

17. The crucial point is that the statutory definition endorses a systematic approach to administrative justice, and no longer treated State decision-making as isolated from redress mechanisms which have been set up in response to it. This was achieved further to the recommendations of Sir Andrew Leggatt in his 2001 report *Tribunals for Users: One System, One Service*.[13] The Leggatt Review paved the way for the co-ordinated tribunal system established by the 2007 Act[14] and described the AJTC (as it

---

[10] TCE Act 2007, Schedule 7, Paragraph 13(4)

[11] No. 5, p. 3 (Executive Summary); no. 1, paragraph 26

[12] As investigated by the PASC in its 2013 inquiry *Complaints – do they make a difference?*

[13] TSO, Crown Copyright, March 2001

[14] The TCE Act 2007 provides the statutory foundation for the consolidated tribunal system consisting of the First-tier and Upper Tribunals. Various tribunals which were formerly separate from each other have now been brought into the 'Chambers' of the First-tier Tribunal. Appeals from these Chambers lie on points of law to the Upper Tribunal.

became) as the "hub of the wheel of administrative justice".[15]

18. That the State should provide for a fair, efficient and effective administrative justice system is of the utmost importance, as Parliament has recognised. In particular, PASC noted that the subject of administrative justice "may seem obscure and technical", but is greatly significant in that it "touches upon the lives, the standards of living, and rights of millions of citizens each year".[16] This was an endorsement of an aspect of the justice system which we consider has long lacked the recognition it deserves, given its impact upon society as a whole (and very often those of its members who are in a particularly vulnerable situation).

19. The importance of administrative justice is such as to demand careful and rigorous scrutiny of government initiatives impacting upon it and liable to cause adverse effects for its users. With the abolition of the AJTC, Parliament itself will have a more decisive role to play than hitherto. The academic and research community will also have significant contributions to make, as will various think tanks and bodies such as the Ombudsman Association. Earlier in 2013 we published our *Research Agenda for Administrative Justice*, an invitation to those with interests either in administrative justice generally or in particular parts of the system to focus their work on suggested themes – being those we believe are likely to assume ever greater importance in the next few years.

20. The 2013 Order will abolish the AJTC and its Scottish and Welsh Committees. No replacement body is to be established in England. In respect of both Scotland and Wales, however, negotiations between the MoJ and the respective devolved governments have led to agreements in principle whereby successor bodies will exercise at least some of the functions of the AJTC's Scottish and Welsh Committees.

21. It is of some significance that abolition will result in the demise of a body with a territorial jurisdiction throughout Great Britain; one which helped ensure that cross-border elements of the justice system remained coordinated in the era of Scottish and Welsh devolution. It is also of some regret that the effect of abolition will be to deprive English citizens of a safeguard which will be partially retained in Scotland and Wales. The ability to draw sharp distinctions between the needs of English users on the one hand and Scottish and Welsh users on the other is weakened by the fact that considerable parts of the administrative justice landscape are shared between the three countries.

---

[15] Leggatt (no. 13), paragraph 7.49. Leggatt recommended an expanded remit for the predecessor to the AJTC, the Council on Tribunals (CoT). The CoT was first established 50 years previously following the passage of the Tribunals and Inquiries Act 1958.

[16] No. 5, p. 3 (Executive Summary)

The AJTC abolition process

22. The process through which the AJTC has come to the present point has been long and protracted. It has been highly unsatisfactory in various ways. Leaving aside that few commentators believe the MoJ has made a clear and consistent case for abolition, we do not consider it appropriate that it has taken three years from the initial decision for actual abolition to result. During that long period of uncertainty and severely declining resources, we have been expected to perform our statutory responsibilities in what can only be said to be extraordinary circumstances.

23. We offer more detailed comment on the abolition process in the second Annex to this Response. An ironic benefit of extensive parliamentary involvement has been to raise the profile of the system and to secure governmental commitments (albeit somewhat generalised) about its future. This Response therefore seeks in part to provide a summary, recording as far as possible all the commitments that have been given at various stages of the process.

The Public Administration Select Committee Inquiry

24. The PASC's inquiry into the Government's abolition proposals led to a report in March 2012. We have already mentioned the Committee's powerful acknowledgement of the importance of administrative justice.[17] Equally valuably, PASC noted the substantial costs savings to be achieved by government in "getting more decisions right in the first place"[18] and thus in reducing the demands placed upon redress mechanisms within the system. We note that this reasoning corresponds with the conclusions of our 2011 report *Right First Time*, which the Committee cited.[19]

25. The Committee made various recommendations and invited the MoJ to make further information available to Parliament regarding its working priorities and resource capabilities in handling administrative justice issues. The MoJ's subsequent response[20] accepted the PASC's recommendation that it should report annually to Parliament. In particular, the Ministry agreed to report on:

    (i): The resourcing of its administrative justice function;

    (ii): The actions taken by its Ministers and officials to improve the operation of the system;

    (iii): How the views of users of the system had been sought and addressed over that year; and

---

17 Paragraph 18, above

18 No. 5, p. 4 (Executive Summary)

19 No. 5, paragraphs 17 – 18. PASC considered "the high level of successful appeals and complaints against decisions by government departments…*an indication of widespread administrative failure*" and noted that the *"scale of the injustice and the cost to the taxpayer caused by this poor decision-making are wholly unacceptable"*.

20 MoJ: *Government Response to the Public Administration Select Committee Report on the future oversight of the administrative justice system*, Cm 8354, May 2012

(iv): How the Ministry had worked with other government departments, the devolved administrations and local government bodies to seek improvements.[21]

It will be important for PASC to build on its success in securing these commitments and to ensure that the annual reports are meaningful.

The draft Order and its scrutiny

26. When the draft abolition Order was laid in Parliament the accompanying explanatory document summarised the Government's plans for work in the administrative justice and tribunals sphere post-abolition. These working priorities were developed in the MoJ's Strategic Work Programme (SWP)[22] which was published simultaneously. The Ministry stated that it did not consider that there would be "any additional costs" in abolishing the AJTC and bringing its policy operations in-house, since staff would be "deployed flexibly according to the demands of the work" undertaken within the MoJ Justice Policy Group at any particular time.[23] Regarding this, the Ministry has since acknowledged 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".[24]

27. The MoJ also explained how (through supporting the establishment of successor bodies) it proposed to address the consequences of seeking the abolition of the AJTC, a GB-wide Council with oversight of the devolved and reserved executive functions and tribunals in Scotland and Wales. The successor bodies will operate on a non-statutory basis and offer advice to the Scottish and Welsh Governments for an interim period of two years, after which it will be for the respective governments to decide what continuing functions of the AJTC, if any, they would wish to retain in bodies they would then establish and finance.

28. For Wales, it was agreed that the Welsh Government will establish a non-statutory advisory body, to be supported for two years by the MoJ at a rate of £100,000 per annum. The First Minister announced in June 2013 that this will be called the 'Welsh Administrative Justice and Tribunals Advisory Committee', with a remit "to oversee tribunal reform and devolved administrative justice" in Wales.[25] It was further agreed that the MoJ and Welsh Government would set "protocols" governing how the Lord Chancellor is to give "due consideration" to the recommendations of the advisory body in respect of the devolved Welsh tribunals, and how he is to consult with the Welsh body on relevant matters.[26]

---

21 Ibid. p. 10

22 MoJ: *Administrative Justice and Tribunals: A Strategic Work Programme 2013-16*

23 Explanatory document to the draft abolition Order, paragraph 7.16 (iii)

24 MoJ: evidence to the Justice Committee, cited by the Committee (no. 1) *Volume II (Written Evidence)*, p. 9

25 Carwyn Jones AM, First Minister, introducing the abolition Consent Motion in Senedd on 11th June 2013

26 Explanatory document, paragraph 8.4

29. In Scotland, it is proposed that the MoJ will fund a similar advisory body, operating again on an interim basis of two years, but at a rate of £50,000 per annum. This body will apparently act to bridge the gap between the AJTC's closure and the establishment by the Scottish Government of an equivalent of the AJTC, which will operate on a statutory footing as a component of the Scottish Government's tribunal reform programme.[27]

30. Early on in the parliamentary process, the Secondary Legislation Scrutiny Committee picked up on our concerns that the explanatory document accompanying the draft Order was "unsuitably vague" and that more "unequivocal" statements of MoJ intentions were needed.[28] Following the various consequent exchanges between the SLSC and the MoJ, culminating in an oral evidence session, the Minister wrote a final letter to the Committee with further details and assurances.[29] Of particular significance, the annex to that letter provided more information about the MoJ's plans for the various tribunals which remain outside of the centralised system established by the 2007 Act and now administered by Her Majesty's Courts and Tribunals Service (HMCTS).[30]

31. Meanwhile the Justice Committee had issued a call for evidence and went on to report in March 2013. As the Committee commented in its special report of April 2013, the Government did not offer any specific response to the concerns raised by the Committee in its original report.[31]

Administrative justice after the AJTC: general considerations for users

32. We believe that the abolition of the AJTC represents a significant point in the history of administrative justice. For 55 years the AJTC and its predecessor the Council on Tribunals (CoT) have been part of the landscape of administrative justice as it exists in Great Britain, and exercised oversight roles. Throughout that period of time the Council has striven to represent the interests of users and to place them at the heart of the justice system concerning citizen versus State disputes.[32]

33. There will inevitably be implications of abolition, as this Response demonstrates. The full implications of abolition are likely only to become apparent over time. Those with an interest in securing the scrutiny of government policy in this area will need to be alert to this, so that the interests of system users remain protected in whatever developments or reforms may impact upon them as time goes on. There is a particular risk that the non-statutory status of the successor body being set up will make it more vulnerable, and that its existence will be relatively short-lived.

---

27 *Ibid.* paragraph 8.11

28 25th Report of 2012/13 Session (HL 109, 31/01/2013), paragraph 32

29 See: SLSC: no. 3, p. 26 *et seq.*

30 *Ibid.* p. 32 *et seq.* It should be noted that the Traffic Commissioners are administered by the Vehicle and Operator Services Agency (VOSA) rather than by the Parking and Traffic Appeals Service as stated in the chart appended to the Minister's letter.

31 No. 4, p. 3

32 The PASC described the AJTC's independent scrutiny of the system as of "vital national importance" – no. 5, p. 3 (Executive Summary)

Impact on users

34. The AJTC's focus has always been first and foremost on the needs of users.[33] Our work, and that of the CoT before it, has been driven by the necessity of prioritising those needs within the administrative justice system, focusing particularly on maximising access and customer satisfaction and the minimising of cost, delay and complexity.[34] It is therefore worrying that our departure comes as we approach further significant changes which will make their effects felt upon the users of the system and potentially transform the essential nature of administrative (and especially tribunal) justice.

35. It is therefore vital that successor arrangements give a high priority to retaining focus on the needs of users. We note that the MoJ is committed at present only to "establishing, encouraging and maintaining a user focus" in policy development, further to its second objective of the SWP.[35] This dilutes the underlying principle of *prioritising* user interests as the foundation of the system. We acknowledge the MoJ's later statement that it "recognises the need to place users of the system at the centre of our strategy".[36] Those involved in future oversight of the system should seek to ensure that this commitment becomes a reality and is delivered in practice.

Legally-aided support and advice

36. Reduced access to the administrative justice and tribunals system is one of the most significant current changes. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) effectively removes the availability of legal aid for those seeking legal help, including advice, in employment and welfare benefits law (amongst other areas).[37] We acknowledge that legal aid had not previously been available for representation in social security tribunals, and that in any case they are intended to be user-friendly in avoiding the need for advocates. The complexity of employment law and the procedures of the employment tribunals are however even more beyond the comfortable understanding of many litigants appearing in person, whilst society's most vulnerable people make up the bulk of those needing advice in order to secure access to their legal entitlements in the social welfare context. That legal aid was not available before the 2012 reforms for representation in social welfare cases is hardly to the point where the availability of legally aided *advice* before a hearing can have a significant effect on the likelihood of success before the tribunal.[38]

---

33 AJTC *Framework Document* (2007), Strategic Objective 1, p. 8

34 AJTC *Strategic Plan 2010 – 13*, p. 7

35 SWP, pp. 13 – 14

36 *Ibid.* paragraph 74

37 Following the rejection by the House of Lords of earlier draft Regulations purporting to implement a Government assurance on the continued availability of legal aid for reviews of First-tier Tribunal decisions in certain welfare benefits cases, the Government decided not to lay further Regulations by which the assurance would be upheld: Hansard HL, 08/01/2013, Col. 13

38 See: Adler, Michael: *The Potential and Limits of Self Representation at Tribunals* (2008). His conclusions state (p. 8) that "when the 'success rates' of unrepresented appellants…*who received pre-hearing advice*" are compared with those of unrepresented appellants or [employment tribunal] applicants who did not, *"the first group did significantly better than the second one"*.

37. We commented on this in our 2011 report *Securing Fairness and Redress: Administrative Justice at Risk?* That report regretted the removal of legal aid provision on the scale ultimately laid down in LASPO, commenting that it was likely to exacerbate the problems faced by vulnerable people (potentially causing greater reliance by them upon the services provided by the State), and that it would also most probably increase both the number and length of hearings. This seemed likely to be due to a combination of fewer negotiated settlements and more widespread appellant ignorance both of tribunal practices and of the relative merits of their cases when unadvised and unrepresented. Ultimately, we concluded that the effect of LASPO would be to diminish the reputation of the justice system in the minds of the population as a whole.[39]

Welfare reforms and the quality of decision-making

38. In our view, the detrimental effects of LASPO are likely to be aggravated by the scale of welfare reforms being introduced by the Government at the present time. On the Government's own figures, for example, the introduction of Personal Independence Payment to replace Disability Living Allowance is expected to lead to approximately 500,000 fewer benefit recipients by 2015/16.[40] A great many of those found to be ineligible for support can be expected to appeal to the First-tier Tribunal, along with claimants questioning loss or reduction of entitlement in other areas. These further appellants are likely to be challenging decisions regarding the new Universal Credit or deriving from the continued use of Work Capability Assessments (WCAs) for the purpose of assessing eligibility for Employment and Support Allowance.

39. The weaknesses of the WCAs as currently undertaken are a matter of public record and have been commented upon by Members of Parliament of all parties.[41] The Public Accounts Select Committee has made heavy criticisms of the assessments,[42] whilst at the time of writing some of their aspects have been found by the Upper Tribunal to be unlawful as not satisfying the Secretary of State's duty under the Equality Act 2010 to secure reasonable adjustments to meet the 'substantial disadvantage' tests otherwise created for those with mental health problems.[43]

40. Against a troubled background such as this, there must be serious concerns both as to the apparent weaknesses of original decision-

---

39 AJTC: *AJ at Risk?*, paragraph 50. The report cited a number of other AJTC concerns stemming from the anticipated development of administrative justice policy, some of which are commented upon later in this response.

40 Department for Work and Pensions: Impact assessment for reform to Disability Living Allowance, May 2012, paragraph 19

41 As seen from the debate following a motion by Michael Meacher MP: Hansard HC, 17/01/2013, Col. 1050 *et seq*. See also: Work and Pensions Committee: evidence session on Employment and Support Allowance and the Work Capability Assessment (Session 2012/13, HC 769i, 21/11/2012)

42 Public Accounts Committee (PAC): *Department for Work and Pensions: Contract Management of Medical Services* (Session 2012/13, HC 744, 08/02/2013)

43 *MM & DW v Secretary of State for Work and Pensions* [2013] UKUT 0259 (AAT)

making in government departments[44] and as to whether the tribunals system is sufficiently prepared to meet the anticipated influx of cases identified in the Senior President of Tribunals' latest Annual Report.[45] And yet it is precisely at this time that the AJTC, as statutory guardian of the needs of the administrative justice user, is being abolished.

Opportunities to vindicate legal rights

41. Risks to access to justice go beyond legal aid changes. There are questions to be asked about the extent to which redress is effectively being put entirely beyond the reach of numerous citizens. This has implications for the health of a democratic and stable society which attaches weight to accountability under the Rule of Law – not least accountability which can be duly enforced against government. We believe, for example, that the 2013 procedural reforms restricting the availability of judicial review (through reduction of time limits and controls on use of oral renewal hearings)[46] were largely inappropriate and founded on faulty analysis. We said as much in our consultation response.[47] That consultation also proposed substantial increases in the fees charged to judicial review claimants and the introduction of a new fee for the progress of an application to oral renewal. This too we criticised, believing the imposition of fees to act as a real barrier and disincentive to the obtaining of administrative redress, either directly or through settlements reached in the shadow of the court. We similarly regret the general movement towards the imposition of fees in tribunals, first for immigration cases and as now confirmed for employment tribunals.[48]

42. We note here the MoJ's comment in relation to the fifth objective of the SWP (on tribunal funding) that "in some jurisdictions there may be a case to increase the financial stake appellants or claimants have in the system so that they have the right incentives to make use of the system efficiently".[49] We invite observers to consider how future fee impositions meet necessary requirements of fairness and the maintenance of access to the justice system, so that they do not act disproportionately against the interests of users of limited means. This is especially important in respect of tribunal jurisdictions in which disputes are between Citizen and State, since the State has little incentive to "use the system efficiently".

---

44 The PAC believed that the present appeal statistics "cast doubt on the accuracy" of the DWP's decision-making (no. 42, p. 3 (Executive Summary)); and in announcing the winding-up of the UK Border Agency the Home Secretary remarked that it "struggles with the volume of its casework, which has led to historical backlogs running into the hundreds of thousands": Hansard HC, 26/03/2013, Col. 1500.

45 The President of the FTT (Social Security and Child Support) noted an anticipated intake of 807,000 appeals in 2015/16, as against a clearance rate of 433,600 in 2011/12. In 2008/09, the intake of appeals was 242,825: SPT Annual Report 2013, p. 29

46 The Civil Procedure (Amendment No. 4) Rules 2013

47 AJTC response to 2012 consultation *Judicial Review – Proposals for Reform*

48 See: e.g., the Employment Tribunals and Employment Appeal Tribunal Fees Order 2013

49 SWP, paragraph 52

43. We note also the apparent emphasis of the fifth SWP objective on ensuring a reduced demand within the tribunals system, including comment on the introduction of new fee models as one of the main means of realising this.[50] In our view, this is disconcerting, as it implies that the ultimate end is the reduction of demand within the tribunals system *per se*, rather than a reduction owing to improved decision-making and user satisfaction, hence leading to fewer appeals being brought. We do not consider it appropriate for government policy apparently to favour reduced access to redress mechanisms within the system as a desirable end in itself, and hope that in our absence parliamentary scrutiny requires the MoJ to recognise "the need...to ensure fair access to justice for all" as its primary operational motive.[51]

Tribunal processes

44. Since it appears to us to be likely that both courts and tribunals will see significantly greater numbers of unadvised and unrepresented litigants than has up until now been the case, this raises questions about whether adversarial models for judicial proceedings remain the most suitable in all circumstances. Judicial forums whose users mostly or often represent themselves (such as the First-tier Tribunal (Social Security and Child Support)) already operate on what might be called an 'investigative' basis, whereby they seek to extract the evidence from the appellant which will ensure that they can consider his or her circumstances against the legal requirements. This approach has sometimes been described as 'enabling' the appellant to make his or her own case, but without the judge taking wholesale responsibility for the gathering of evidence (the hallmark of a fully inquisitorial judicial system).

45. We anticipate that the case for other tribunals to act in this *investigative, enabling* way is likely to increase significantly over the coming years, and especially if the availability of legally-aided assistance decreases. It is at this stage a point mainly with implications for the training of tribunal judiciary and members, as well as for their methods of operation. But as time goes on it may well be that some essential underpinning principles of tribunal proceedings will need to be strengthened so that user-friendliness continues to be at the heart of the way in which cases are undertaken and managed.

[50] *Ibid.* paragraph 53

[51] *Ibid.* paragraph 52

Section Two: Future concerns for administrative justice

In this section, we highlight a series of issues that will affect future oversight. After commentary upon the MoJ's own plans and the developing role of its new Advisory Group, we stress the importance of sound Principles to provide criteria for oversight. We conclude with observations on key substantive issues.

The MoJ's proposed work programme for administrative justice: AJTC views

46. As indicated, when the draft abolition Order was laid in Parliament the accompanying documentation explained the MoJ's proposed programme of work on administrative justice for the years until 2016. The two central documents in this regard were the explanatory document to the Order and the Strategic Work Programme (SWP).

47. The explanatory document summarised the anticipated work in broad terms, with supplementary details being found in the SWP. Key aspects of the programme of work include:

    - The strengthening of "bi-lateral arrangements" between the MoJ and other government departments and agencies whose operations impact upon administrative justice;
    - The establishment of a "proportionate programme of transfer" in respect of tribunals currently outside the centralised HMCTS system, taking into account the costs and benefits of particular transfers;
    - Working with other government departments to ensure that tribunals which remain outside of the centralised system will "sensibly align" with the HMCTS tribunals;
    - Examining the funding arrangements for tribunals, including by considering "whether they best reflect the total cost to Government of decision-making and provide the right incentives to use the system efficiently";
    - Seeking to improve initial decision-making across departments, notably through working to secure "better end-to-end performance information" and through increasing "the quality and usefulness of feedback to departments from the onward appeal processes";
    - Gathering "better information" on the needs and interests of the users of the administrative justice and tribunals system, through assessment of "targeted surveys, user input...and complaints", complete with reference to the findings of user groups.[52]

48. It was in the context of the last of these points, user interests, that the MoJ explained its proposals regarding the work of its

[52] Explanatory document, paragraphs 7.8 – 7.15

'Administrative Justice Advisory Group' (AJAG).[53]

49. The Government sought ultimately to reassure that:

    i) "It will continue to take account of the views of service users, including those in vulnerable groups";

    ii) "Almost all remaining central Government tribunals which are outside of HMCTS [either] have been...transferred into HMCTS, will be, or are being given further consideration for transfer in";

    iii) It is "committed to an overview of the whole system, not just HMCTS-administered tribunals";[54] and that

    iv) It is equally "committed to developing a strategic, UK-wide approach to the administrative justice system".[55]

50. The SWP goes on to focus on ten particular objectives for the MoJ's forthcoming work. These are listed in Annex C to this Response. In general, we should note that we are concerned by the inherent vagueness, generalisation, and (we believe) insufficiency of what the SWP indicates the Government will actually do to reach these target objectives it has set.

51. Despite the limitations, we invite the Justice Committee and others to note the apparent centrality of the above commitments to the programme of work that the MoJ has proposed, and to assess the extent to which the MoJ is meeting these aspirations in practice.

52. We invite the Justice Committee to monitor the progress of work in support of the SWP and in due course to review whether successive Strategies and Plans from the MoJ are sufficient to meet the underlying needs of users and of improving the system for the benefit of its users.

Work with other government bodies

53. As regards the first SWP objective on the strengthening of arrangements with other government agencies, it should be remembered that the AJTC was intended to provide the "hub of the wheel" of the administrative justice system.[56] The AJTC has therefore possessed a particular brief for bringing together the various strands of government, across many departments, which have a concern for administrative justice in general and tribunals in particular. We consider the fact that the AJTC is not a central government department has been part of its strength in being able to take a holistic, panoramic view of government for these purposes.

54. For this oversight role to be meaningfully performed requires more than "bi-lateral arrangements", in the abstract, between

---

[53] See: paragraphs 55 *et seq*., below

[54] The Minister confirmed, in a letter to the SLSC, that "no part of the administrative justice system currently under the AJTC's overview remit will be left out under the new arrangements": see – no. 3, p. 30

[55] Explanatory document, paragraph 9.6 *et seq*.

[56] No. 15

departments. This is especially so when the departments with which such arrangements are being made are not necessarily attuned to the notion of administrative justice conceptually and with what it demands. It follows that we have not been able to clearly establish what, in a proactive sense, the MoJ proposes to do to "help spread good practice across jurisdictions".[57] Effective bilateral arrangements are likely to include proactive and authoritative engagement by MoJ with the justice impact test process when new policy is proposed by other departments; and active engagement by MoJ when the governance arrangements or procedural rules of tribunals outside the unified system are under review.

The Administrative Justice Advisory Group (AJAG)

55. Similarly, the second objective the SWP suggests that the backbone of the MoJ's work on developing user interests in the system will be the 'Administrative Justice Advisory Group'. The SWP goes on to explain that the MoJ wishes this group to "play a dynamic role in helping to address issues for users".[58] And yet concerns about the role of the AJAG as a source of – in particular, independent - advice on user interests have been at the heart of the difference of opinion between the Government and the AJTC regarding the quality of successor arrangements. We share the conclusions of others, as cited by the Justice Committee, that the AJAG as proposed throughout the parliamentary scrutiny process represents a "poorly planned afterthought", and that it has not been clear whether or how AJAG would be able to "provide reports or carry out public consultation", in both cases as a reinforcement of its independence.[59]

56. The Ministry has doubted that having a source of independent advice for government is "an end in itself",[60] even though both the AJTC and the parliamentary Committees have taken a different view. It is clear that, without the AJTC, the only actual or potential vehicle for ensuring the availability of independent advice to government is the AJAG. The SLSC was fully aware of this in assessing whether the AJAG and its remit satisfies the requirement of s. 8(2)(a) of the 2011 Act that a 'necessary protection' should not be removed through a Public Bodies Order. It therefore pressed the Minister to see whether AJAG will be "a *'pawn of the Department*' or whether it will exercise some independent review, albeit in a different way from the AJTC".[61]

57. We have expressed concern that the arrangements for the AJAG are unsatisfactory and do not ensure a source of independent advice., It has not seemed to us realistic to suppose that the group will be able to achieve much of particular substance on its

---

[57] SWP, paragraphs 38 - 39

[58] *Ibid.* paragraph 40

[59] Dr Jeff King, University College London; and MIND (mental health charity), as respondents to the Justice Committee inquiry – cited by the Committee (no. 1), paragraphs 10 – 11. The SLSC expressed its agreement with Dr King's suggestion: no. 3, paragraph 16

[60] Helen Grant MP to SLSC: no. 3, p. 26

[61] No. 3, paragraph 15 (emphasis added)

own, since it remains the Ministry's intention that it should meet formally only twice a year and under MoJ chairmanship.[62] We therefore could not understand the Minister's insistence that "AJAG will offer *most* benefit to...users"[63], and will play "a vital role", as we do not see how its role could be said to offer "most benefit" on those conditions. Moreover, as pointed out by Baroness Morris of Yardley (sitting on the SLSC during the oral evidence session) the AJAG's utility is likely to be adversely affected by the proposal that its members should work on a voluntary basis (without expenses). This is liable to "cut out lots of people" who might otherwise have been able to become involved in the group.[64]

58. The SLSC reported that "fundamental points" about AJAG's remit had not been confirmed by the time of the evidence session in May,[65] and uncertainties on this point remained despite the Minister's follow-up letter to the Committee which sought to reassure on the issue. What is clear is that the AJAG will not have equivalent responsibilities to the AJTC regarding the scrutiny either of legislation or operational issues. Neither did the SLSC feel able to conclude that AJAG could "commission consultation or research" of its own accord, with such decisions instead being "at the discretion" of the MoJ.[66] A further problem is that the group's membership will apparently continue to favour representation of particular interests over securing a purview of the entirety of the administrative justice landscape. As the MoJ puts it, members will "speak with the authority *of their own organisations*".[67]

59. Finally, there is the question of independence itself. Experiences so far have involved the AJAG's agenda being "largely" set for it by the MoJ,[68] and in any case the group has no standing resources of its own. Given the limitations on AJAG's ability to determine its own financial and working arrangements, (and its dependence "for its existence" on the MoJ)[69] we do not accept that the requirements of independence as identified by Parliament have been met.[70]

60. We welcome the late further concession made by the Minister in her statement to the House of Commons Delegated Legislation Committee on 3 July 2013 that an independent AJAG Chair is now to be appointed, although in our view this undermines the case for abolishing the existing body still further. It is not yet clear whether the Chair is to be remunerated or how their role will be defined.

61. Despite our reservations, we acknowledge that AJAG will be the main forum for future identification and discussion of user

---

62 Helen Grant MP to SLSC: no. 3, p. 29

63 *Ibid*. p. 26 (emphasis added)

64 Transcript of oral evidence session, question 11

65 No. 3, paragraph 16

66 *Ibid*. paragraph 29

67 Helen Grant MP to SLSC: no. 3, p. 27 (emphasis added)

68 *Ibid*.

69 Written evidence of MIND to Justice Committee (no. 59)

70 For a summary of what, in our view, is necessary for the AJAG to satisfy requirements of independence, see: evidence of the AJTC Scottish Committee to the Justice Committee, cited by the Committee (no. 1) *Volume II (Written Evidence)*, p. 2

concerns, and consequently we wish for it to be able to work as robustly as possible to achieve these aims within the framework that the MoJ will provide. We note also that the MoJ has commented on "*likely*" aspects of the AJAG's set-up as part of its evidence to the Justice Committee. We recommend that the following steps should be taken to maximise the robustness of the body

i) AJAG should meet more often than twice a year. The MoJ is not apparently prepared to embrace a programme of monthly meetings[71] but we consider that the frequency of meetings should be a matter for the Chair and members;

ii) Full minutes of AJAG meetings should be published as a matter of course and not only "on request"[72] from interested parties;

iii) MoJ's Annual Reports on the administrative justice system to PASC and the Justice Committee should routinely include a contribution from the AJAG chair;

iv) MoJ should seek the views of the AJAG on policy or legislative proposals (including those from other government departments) likely to impact upon areas of administrative justice. These views should be publicly recorded in the minutes so that the Government's consequent actions can be measured against them;

v) MoJ should include narrative in its annual reports on how AJAG's work will be used to guide the development of inter-departmental governance arrangements.[73]

vi) The Chair and Members of the AJAG should insist on a real influence over their own agenda

vii) AJAG should create its own sub-groups for the provision of more detailed advice on (AJAG-selected) priorities;

viii) MoJ should keep the membership of the AJAG under review and seek advice on membership from the independent Chair

ix) AJAG should replicate the "watchdog" role of the AJTC as far as practicable, and seek input from sources other than MoJ officials to enhance its knowledge of user experiences across jurisdictions and of current issues.

62. Even with these changes, AJAG will not be an independent body. Nevertheless it still has some potential to play a role in the scrutiny process. To ensure that this role is meaningful, we consider that MoJ should provide appropriate financial support to AJAG members in fulfilling their responsibilities.

63. We invite the Justice Committee to take a particular interest in the affairs of the AJAG, its remit and experiences and to take evidence from it independently in due course.

---

71 Helen Grant MP to SLSC: no. 3, p. 26

72 *Ibid*. p. 27

73 MoJ: supplementary evidence to the Justice Committee, paragraph 21 - cited by the Committee (no. 1), *Volume II (Written Evidence)*, p. 65

Principles for administrative justice policy

64. The SWP explained that the Government regards the administrative justice system as being underpinned by the three principles of fairness, accessibility and efficiency.[74] These reflect the terminology within the TCE Act which set up the AJTC and its functions.

65. Whilst we welcome this element of continuity, we believe that these overarching goals need elaboration. Our 2010 publication *Principles for Administrative Justice* highlighted seven core principles which we believe should underpin assessment of the success or otherwise of government action in the administrative justice system. The *Principles* were brought together after lengthy consideration by the Council and following consultation with stakeholders, including the MoJ and other relevant government departments.

66. We believe that these seven Principles underpinning the administrative justice system (applying both to first-instance decision makers and to redress providers) remain wholly valid and should form the basis of criteria for future assessment of the system:

    i) Users and their interests should be central to the system. They should necessarily be treated with fairness and respect at all times.[75]

    ii) The system should enable people to challenge decisions and seek redress. Procedures for these purposes should be independent, open and appropriate for the matter concerned.

    iii) Government actors should keep people fully informed and empowered throughout a dispute to enable as speedy and comprehensive a resolution as possible.

    iv) The system should lead to well-reasoned, lawful and timely outcomes.

    v) The system should be coherent and consistent.

    vi) It should work proportionately and efficiently.

    vii) Government actors should adopt the highest standards of behaviour, seek to learn from experience and constantly improve.

Quality and nature of information for users

67. Given the decreased availability of legally-aided advice and support for users, some of whom will be of limited means or vulnerable in some way, it is highly likely that there will be a corresponding increase in the demand for alternative sources of information and advice. The Government itself is of course a potential source of much advice and guidance, whether through the provision of direct information or through a means of signposting to other providers in the voluntary or charitable sectors. In our view, ensuring the sufficient accessibility and transparency of information, as well as

---

[74] SWP, paragraph 14 *et seq*.

[75] The notion of user-centrality was at the heart of the Leggatt Report (no. 13)

its practical utility, should be the key targets of any government initiative for the provision of information to users.

68. It is particularly important that the provision of information by government remains transparent and open, so as to limit adverse consequences of (in some areas at least) effective government monopolisation over the type and quality of the advice and guidance available. We have concerns, therefore, regarding the potential for the consolidated (and conspicuously governmental) website Gov.UK to become the default provider of advice for users, for example due to the closure of local independent advice agencies. So whilst in principle we welcome the MoJ's commitment to seeking improvements in signposting, given that users "cannot expect the system to work effectively" without knowing their options,[76] we are wary of any situation in which the Government itself is the predominant sign-poster.

69. The Government should be seeking to ensure that its own advice is actively helpful and provides appropriate signposting to external agencies. Advice and guidance, if it is to be truly helpful, must include tactical or logistical support and cannot be limited to bare factual statements. The Government is not well placed to provide this sort of advice as doing so could be prejudicial to its own interests.

70. It is of some significance that the SWP commits the MoJ to a communications strategy "aimed at the user rather than reflective of the way [in which] government works", as part of which the MoJ will seek to ensure the provision of "accurate, detailed information for those that need it".[77] We invite the Justice Committee to take evidence from MoJ and from other interested parties about the effectiveness of this strategy in due course.

Essential requirements for advice and information on welfare benefits

71. Many of those seeking to navigate the administrative justice system will find it difficult to do so – especially when needing to challenge a decision about entitlement to welfare benefits. This is a notoriously complex and multi-faceted part of the system, and the Government's decision to introduce the new consolidated payment of Universal Credit has the explicit aim of simplification.[78] Meanwhile, of course, it is not uncommon for those seeking access to the welfare system in particular to face barriers to their levels of communication and understanding.

72. It is therefore especially important that the information the Government provides to welfare claimants and other system users should appropriately tread the balance between ensuring sufficient clarity and simplicity of tone on the one hand and including sufficient detail of content on the other. We acknowledge that this is not necessarily easy to achieve. But in so far as that

---

[76] SWP, paragraph 76

[77] *Ibid*. paragraph 77

[78] Regarding the overall administrative justice system, the SWP notes that "the structures of government are not always intuitive to navigate for users" (paragraph 77)

balance is concerned, it is worth remembering that the provision of too little information (even when carefully expressed) is not likely to be especially helpful. It will always be important for enough information to be provided to enable the recipient both to appreciate the necessary particulars for further action (if any) and to understand the essential aspects of the stages of the decision-making or appeal process of relevant concern at any particular time. Meanwhile, to enable this material to be digested, there will often be a case for provision of information in a document series rather than wholesale in one place.[79]

73. We offer a few examples on these points. Part of our recent work, in cooperation with the Social Security Advisory Committee, has been to assess some of the explanatory material the Government has made available in relation to the submission of claims for new benefits, such as the Personal Independence Payment (PIP).[80] We were pleased to recognise an apparently genuine attempt to make the language of the explanatory material we viewed comprehensible[81] but had concerns as to whether some of it was too sharp in tone. Examples of PIP notification letters, for instance, did not appear to deal as sensitively as they could have in their description of what, for many sufferers, are embarrassing conditions (such as incontinence).[82]

74. Moreover, we had particular reservations about vague statements in some of the DWP material concerning the difference between the new form of 'mandatory consideration' by the Department's decision-makers (as introduced by the Welfare Reform Act 2012) and the statutory right of appeal to the tribunal. It would in our view be unsurprising if claimants conflated these concepts, or failed to appreciate how an appeal was an independent judicial process entirely distinct from the reconsideration concept first introduced to them by, for example, the sample decision letter for PIP.[83] We therefore believe that this material will need to be kept under review from the perspective of clarity and user-friendliness.

75. In that regard, the material could be tested following its use in those limited areas in which the new benefits are being introduced before their national roll out. The opportunity to undertake this sort of review will clearly be within the remit of the Social Security Advisory Committee.

---

79 We notice, for example, that the latest HMCTS guide for social security appellants, *How to appeal against a decision made by the Department for Work and Pensions* (SSCS1A), is a very useful and comprehensive document but that it could be split into two versions, one for welfare benefits appeals and the other for child support/maintenance appeals. We also considered that the guide could be improved by explicit statements to prospective appellants of how it is in their best interests to attend their appeal in person.

80 The AJTC Chairman, Richard Thomas, wrote to Paul Gray, Chairman of the Social Security Advisory Committee, on this subject in June 2013.

81 There are however some technical references of which the reader's knowledge is simply assumed – for example in the citation of how the claimant is deemed to have met the "*descriptors*" for the Daily Living Component, without further explanation of what 'descriptors' are: DWP: sample decision letter for Personal Independence Payment, gov.uk – p. 3

82 *Ibid.*

83 *Ibid.* p. 5

Maintaining accessibility and transparency of government advice

76. On the accessibility of advice and information, there is some evidence to suppose that further proactive contributions are needed from government to secure improvements. The use of chargeable 0845 telephone numbers for government advice centres, for example, may well pose serious impediments to their access by some. And given the concerns previously raised by the Public Accounts Committee in respect of the disproportionate impact on vulnerable service users of having to make use of 0845 numbers in calling HMRC[84] (which encouraged a change of policy),[85] we see a strong case for the standard use of free-phone 0800 numbers for contact regarding eligibility to, in particular, social security benefits.

77. Meanwhile, references within DWP material to the existence of "local support organisations" in the abstract[86] are likely to be of little assistance to those needing the help of such organisations. The preferable approach must surely be for the DWP to provide clear lists of local organisations, complete with contact numbers and addresses, as an annex to the decision letters.

78. As a final point, we have some doubts as to the capacity of what is necessarily a huge single website, Gov.UK, to be readily navigable by service users as a whole (and especially those with limited skills in the use of the Internet). Of course, the site can be tested by users, and such improvements made as seem appropriate in the light of that assessment.

Digital by default

79. Related to the development of Gov.UK as a source of advice is the Government's intention to establish a default digitisation of the means of applying for social security benefits. This corresponds with the policy of providing more information and guidance in online format only.

80. As with other aspects of government operations there is a genuine risk of a one-size fits all strategy, based on the apparent economic viability of focusing on a narrow (if generally sensible) target. We note, for example, that the tenth objective of the SWP speaks of the provision of best services for users as if such would flow axiomatically from the further exploration of digitisation.[87] In many cases, that might well be true. But one of the hallmarks of the administrative justice system is that its users are often disadvantaged in some way. Against such a background, where users may be isolated from Internet access on grounds of cost or location, or may otherwise be unfamiliar with or intimidated by the digital sphere, it must be remembered that those "who may

---

84 See, e.g., PAC: *HM Revenue and Customs: Handling Telephone Enquiries* (Session 2009/10, HC 389, 25/03/2010), p. 9

85 As noted by the PAC in its subsequent report - *HMRC: Customer Service* (Session 2012/13, HC 869, 18/03/2013)

86 PIP decision letter (no. 81), p. 7

87 SWP, p. 21

struggle to access or use...digital services by themselves"[88] could well make up a substantial minority in some cases.[89]

81. We therefore note with concern how the SWP extols the benefits of digitisation and comments on the "wider drive by government" to secure it,[90] without (in our view) seriously acknowledging how, in the administrative justice sector, full digitisation and user interests are only likely to be compatible where user limitations are genuinely appreciated and given mainstream consideration in the overall approach.[91]

82. We therefore invite AJAG and the Justice Committee to seek commentary from MoJ on how it has integrated the needs of those at risk of exclusion within its digitisation strategy.

First-instance decision-making and *Right First Time*

83. In investigating the implications of abolition, PASC in particular examined how improvements are to be sought in initial decision-making by government departments so as to reduce burdens placed on tribunals, ombudsmen and other dispute-resolution bodies.[92] This issue has been of longstanding interest to us.[93] Our key recommendations in this area are contained in our *Right First Time* report.

84. As PASC clearly appreciated, the importance of improving original decision-making processes and the way in which users' needs are addressed through and by them is of pivotal importance to the administrative justice system. Ineffective, all too often mistaken[94] administration causes considerable anxiety and distress, alienates users whose needs should be central, and costs a considerable amount of public money through increasing the demands placed

---

88 *Ibid.* paragraph 84

89 Citizens Advice Scotland found in its report of May 2013, *Offline and Left Behind*, that 76% of its client respondents to a survey on the effects of digitisation felt that they would struggle to use the Internet in applying for benefits. 39% said that, based on their current levels of confidence in using computers, they would not be able to apply online for support at all. Of this 39%, 49% stated that they had never even used a computer before: p. 4 (Executive Summary).

90 SWP, paragraph 84

91 The SWP contains no detailed explanation of the support to be offered to users at risk of exclusion, with only one example given (the use of intermediaries).

92 See: paragraph 24, above

93 The AJTC and CoT have over many years strongly supported efforts made by the DWP to improve standards of decision-making. We warmly welcomed the PIDMA (Professionalism in Decision-Making and Appeals) initiative trialled by the then Disability and Carers Service, which led to staff receiving academic accreditation in decision-making. PIDMA was positively evaluated but was not taken forward on grounds of cost. We also liaised closely with the former DWP Decision-Making Standards Committee in order to understand better how the committee undertook its function and to suggest areas for future scrutiny; and we contributed to a feasibility study on decision-making carried out by Sir Leonard Peach.

94 In a recent response to a question in Parliament, the Minister noted that the current rate of successful appeals against Work Capability Assessments as aspects of claims for Employment and Support Allowance is 42%. This is itself an increase from previous successful appeal rates. The total cost for all ESA appeals between April and December 2012 was given as £37 million - see: Parliamentary Questions 153946 and 153947, Helen Grant MP responding to Tom Greatrex MP, Hansard HC, 15/05/2013, Col. 214W

on judicial and other bodies left to resolve disputes which arise as a result. To that extent, if MoJ places too much emphasis on tribunals at the expense of seeking improvements in government decision-making, then there is a risk that problems will be being targeted from the wrong end.[95]

85. The MoJ response to the PASC report suggested to us that the Government did not accept the scale of the problem which PASC had emphasised, in that it was able to agree only that there is "scope for improvement" in the field.[96] The MoJ has however since recognised the value of incorporating the 'Right First Time' agenda into the SWP.[97]

Data to illuminate approaches to policy decisions

86. There is clearly scope for the use of performance data to influence government strategy in this area. As the MoJ has said, "full system cost and performance information will allow government to make smarter decisions on where to invest to improve decision-making and the quality and speed of people's journey through the system".[98] But the SWP seems to offer only generic comment on how "full system cost and performance information" will be acquired. Indeed, the MoJ acknowledges what must be a notable limitation, namely that it does not at present have "consistent system-wide data on decisions taken by public sector bodies, [or] on disputes resolved successfully before reaching tribunals", and therefore presumably now faces the significant challenge of acquiring such information for the first time.

87. As a result, it is currently "difficult to identify where there are genuine areas of concern with original decision-making bodies or where good practice is having an impact",[99] which will presumably continue to be the case until such time as systematic data is available. So we welcome the delivery of "improved end-to-end performance data" as a key objective of the SWP.

88. It will be beneficial to Parliamentary scrutiny if the MoJ annual reporting to Parliament includes additional end-to-end data as it becomes available

Financial incentives for accurate decision-making

89. There is also scope for government departments to be given financial incentives to get their decisions correct in the first instance, a point perhaps alluded to but certainly not expressly stated at paragraph 52 of the SWP. The HMCTS funding settlement for tribunals is already contributed to by departments whose policy initiatives are likely to have significant effect upon the tribunals system. It seems to us that there are opportunities for this to be explored further, and perhaps through a form of 'polluter

---

95 A point made by Professor Colin Reid in his evidence to the Justice Committee, cited by the Committee (no. 1), at paragraph 20

96 No. 20, p. 7

97 SWP, Chapter 4: pp. 17 – 18

98 *Ibid.* paragraph 59

99 *Ibid.* paragraph 57

pays' scheme, whereby a governmental party whose error has led to an adverse tribunal decision would be required to contribute a further proportion of the costs of the case.

90. We appreciate of course that any re-allocation of public funds risks limiting the effectiveness of those parts of government whose budgets are affected. Even so, we would argue that the claim that "funding arrangements do not share risk in a meaningful way"[100] could be made at least as equally in respect of government departments which continue to remain financially insulated from the impact of their mistakes as it can in respect of service users.

Feedback from tribunals

91. The Government acknowledges the value of feedback from tribunals as a way of enabling it to improve original decision-making, and confirms that its seventh SWP objective is to ensure that sufficient information "is made available to enable improvements in the quality" of administration.[101] This is welcome. Even so, to be useful the system for the provision of feedback must avoid prescription and formulism. As Ministers have acknowledged, it must go beyond a 'drop-down' menu, which of itself may indicate little.[102] We tentatively welcome in that regard the trial of new feedback approaches from social security tribunals, as reported by the BBC in June 2013,[103] and hope that these lead to visible improvements which can be replicated nationally.

92. Meanwhile, the general utility of feedback would probably be enhanced if it could be relayed directly through a person who was able to take the judge's comments on board, having had personal involvement in the proceedings at hand. We therefore regret the increasing rarity, to the point of exceptionality, of the appearance of the Secretary of State's representatives at tribunal hearings of social security appeals. It seems to us that there are a variety of reasons why presenting officers should continue to be deployed, even if at some cost. That they act as a useful means of obtaining detailed feedback is one such reason.

93. We consequently invite the Justice Committee to keep under review the effectiveness of the forthcoming MoJ pilot of "new approaches for providing enhanced feedback from tribunals".[104]

94. Of course, identification of where problems may lie does not of itself address those problems. We maintain that the MoJ has a key role to play in this area in helping to direct improvements. To this end we suggested some supportive 'practical steps' as part of our *Right First Time* project, as well as a series of recommended actions for government decision-makers.[105]

---

[100] *Ibid.* paragraph 51

[101] *Ibid.* p. 18

[102] Mark Hoban MP, DWP Minister, in response to Sheila Gilmore MP: Work and Pensions Committee, oral evidence session on Employment and Support Allowance and the Work Capability Assessment (Session 2012/13, HC 769i), questions 78 – 79

[103] "Judges to explain benefit decisions": BBC News website, 21/06/2013

[104] SWP, paragraph 63

[105] *RFT*, pp. 24 - 27

Administrative justice scrutiny – the loss of the panoramic perspective

95. The MoJ's arguments on the merits of abolition have consistently referred to the decreased value of the AJTC's independent oversight of tribunals when the most regularly used tribunals now form part of a co-ordinated system administered by HMCTS. Indeed, the Ministry believes the AJTC's role to represent a "partial duplication of effort"[106] given that background.

96. Setting aside for a moment that this justification does not address the issue of *independent* oversight,[107] the merits of the argument in any case amount to little with regard to those tribunals that are not part of the co-ordinated system. Where they are not, any indirect responsibility the Ministry may have can only be exercised in cooperation with other departments or agencies with formal responsibility for the tribunals concerned. And so, following AJTC abolition, there will be no equivalent single body taking responsibility for the systematic review of the various tribunals, including those remaining outside the central system.

97. Correspondingly, oversight and review of government policy impacting upon the administrative justice system (which since 2007 has been a substantial part of the AJTC's responsibility) will not in future be within the remit of any single body, whether parliamentary or otherwise, as different government departments will set the policy agenda and administer the related tribunals in their respective fields. We consequently believe that the AJTC's role as a 'focal point' for administrative justice review within government will be lost, and this without it having been replicated elsewhere.

98. The MoJ acknowledges this, and has committed to reviewing those parts of the system outside of its direct responsibility.[108] This is welcome in so far as it goes, but we have already commented upon our concerns regarding the extent to which the MoJ is able – even if willing – to secure systematic oversight when working in cooperation with other government departments.[109] We therefore continue to believe that abolition will eventually reveal a reduction in the oversight and review secured in respect of government policy, together with assessment of its impact upon service users.

The role of Ombudsmen and complaint-handlers

99. The AJTC's scrutiny of both the judicial and non-judicial aspects of the system means that we have been able to provide a holistic view on the way in which these components of administrative justice fit together.

---

[106] MoJ, in response to SLSC: 32nd Report of 2012/13 session (HL 146, 14/03/2013), p. 11

[107] The AJTC's role has been to provide independent advice on, and scrutiny of, the administrative justice system.

[108] See: paragraph 49, above

[109] See: paragraph 53 *et seq*., above. At least in so far as non-HMCTS tribunals are concerned, the Justice Committee agrees that the probable extent of MoJ oversight is "highly questionable": no. 1, paragraph 25

100. In respect of the non-judicial aspects, the perspective of the three Ombudsmen (Parliamentary and Health Service, Public Sector for Scotland and Public Sector for Wales) as members of the AJTC and its Committees has been a valuable complement to our work, whilst expertise in complaints-handling and the work of ombudsmen within the general membership adds to the AJTC's capacity to view redress mechanisms in a systematic and coherent way.

101. By contrast, we remain unconvinced that MoJ has a clear understanding of the role of Ombudsmen within the system. In the Minister's oral evidence to the SLSC, she referred to those "ombudsmen and other bodies that are not yet in the unified tribunals system". [110]Ombudsmen schemes are not judicial forums, are not under the Ministry's sponsorship,[111] and could not be brought into the unified tribunals system. The Ministry also commented that it will "explore operations for using ombudsmen to achieve redress earlier for users",[112] implying that it conceives of ombudsmen as quicker and more efficient alternatives to tribunals. Whilst this may be true in some cases, it must be recognised that ombudsmen primarily address complaints against maladministration rather than appeals against alleged misapplication of the law.

102. We have noted that the Law Commission's report on the role of Public Services Ombudsmen[113] has received no governmental response despite the statutory expectation that this should come about within a year.[114] We believe that any significant attempt by government to keep the Public Services Ombudsmen under review or to assess the way in which they can best serve administrative justice users would first require active engagement with the Law Commission's recommendations on the same subject.

103. Our recent evidence to PASC in respect of its latest inquiries on (i) the Parliamentary and Health Service Ombudsman and (ii) whether complaint-handling schemes secure actual improvements in administration raised a series of general points for further consideration. The first is that we do not believe that there is sufficient public understanding of the role and remit of the PHSO and the other Public Services Ombudsmen, or of the distinctions between them and formal appellate means of redress. The MoJ acknowledges the value of better "signposting and digital guidance so that those with a complaint or grievance can access the most appropriate services to achieve redress",[115]

---

[110] Transcript, p. 3

[111] General government policy in respect of ombudsmen is the responsibility of the Cabinet Office, which produced advice for other government departments in April 2010 on the essential requirements of ombudsmen schemes.

[112] MoJ: supplementary evidence to the Justice Committee, paragraph 19 - cited by the Committee (no. 1), *Volume II (Written Evidence)*, p. 65

[113] *Public Services Ombudsmen,* Law Com. No. 329 (HC 1136), July 2011

[114] Law Commission Act 2009, s. 1

[115] No.112. Our evidence to the PASC in its 2013 review of complaint-handling noted that the appeals/complaints distinction is not always obvious to users, who may not appreciate which body to turn to in seeking redress. Moreover, links between different institutions are not always sufficiently strong to ensure that cases are passed to the correct channel, thereby increasing user dissatisfaction and exacerbating confusion.

104. MoJ will also need to be aware of the potential implications of wider government policy for ombudsman schemes and any related, if distinct, appeal mechanisms.[116] It would be regrettable, for example, if delays in the determination of mandatory reconsideration processes within DWP led to more complaints being made to the PHSO, given the block on the exercise of statutory appeal rights before mandatory reconsideration has been completed.

105. Thirdly, we noted that there is considerable scope for incidents of complaints and responses to them to inform subsequent policy and ensure improved decision-making in future. There is therefore a clear link to be made between the MoJ's work on seeking improved initial decision-making and what it proposes to do in respect of complaints schemes as part of its promised review of the entire administrative justice system.[117]

106. The MoJ has stated that it will "continue to work closely with the Cabinet Office" on ombudsman issues[118] and will "strengthen links with the PHSO".[119] What is not clear, however, is *how* the MoJ will advance this work (given the Cabinet Office's primary policy responsibility in this area).[120] We are instead rather left with the impression that the Ministry has given consideration to these issues only in the most generic terms.[121]

The scrutiny gap exemplified: Council Tax Reduction and the Valuation Tribunal

107. We have already made clear that, in our absence, we believe Parliament will bear a significant responsibility for future oversight of the system. Without this, we fear that it will be more difficult to maintain a systematic concept of administrative justice as was envisaged by the Leggatt Report.[122]

108. An example of the potential on-going risk is demonstrated by our recent experience of amendments to the jurisdiction of the Valuation Tribunal for England (VTE).[123] These jurisdictional changes came further to the combined reform package contained in the Welfare Reform Act 2012 and Local Government Finance

---

[116] The Ministry intends to "seek to address systemic issues within government that are leading to maladministration or unfairness for users": MoJ, in response to SLSC (no. 106), p. 13

[117] See: paragraph 49, above

[118] No. 20, p. 9

[119] No. 106, p. 13

[120] Whilst the Ministry has stated that its work regarding ombudsmen will be in fulfilment of the proportionality strand of the SWP (no. 112, above), Chapter 5 of the SWP on "enhancing proportionality" does not make reference to any specific work in the ombudsmen or complaint-handling fields.

[121] The Ministry suggested in its supplementary evidence to the Justice Committee that little had been shown by way of the AJTC's role in relation of ombudsmen – supplementary evidence, paragraph 14; cited by the Committee (no. 1), *Volume II (Written Evidence)*, p. 64. We wish to note that, as recently as June 2012, we held a stakeholder-focused seminar, *Towards a Review of Public Services Ombudsmen*, attended (amongst others) by the PHSO and Public Services Ombudsman for Wales.

[122] No. 13

[123] The VTE is currently outside of the HMCTS system

Act 2012. Together, these ensured the abolition of Council Tax Benefit and the creation of localised support, namely Council Tax Reduction Schemes. The abolition of Council Tax Benefit meant the end of associated rights of appeal to the First-tier Tribunal (Social Security and Child Support) in cases of dispute, with Council Tax Reduction Schemes being set up so that appeal rights, in England at least, were placed within the remit of the VTE.[124]

109. The responsibility for the whole policy package in respect of local government finance, complete with the transfer of appeal rights to the VTE, lay with the Department for Communities and Local Government (DCLG). The MoJ engaged with the DCLG on some issues, notably the judicial capability of the VTE in handling these new appeals. Specifically, the Local Government Finance Bill was amended so as to enable First-tier Tribunal judges to sit within the VTE on Council Tax Reduction cases under certain conditions.[125] We acknowledge that the Ministry "was able to proactively manage the risks of a policy"[126] on this particular question, but we note that the localisation of council tax support is a significant component of the Government's welfare reform changes.

110. Meanwhile, DCLG's statutory obligation to consult with the AJTC on changes to the procedures of the VTE[127] meant that we were able to secure some improvements to these rules before they were enacted. As a result of our feedback, provisions were included (amongst other things) for the communication to affected appellants of the existence of the right to obtain written reasons for the tribunal's decision. We were also able to express concerns about provisions enabling the tribunal's administrative staff to exercise strike-out functions without, in our view, clear judicial oversight of such practices.[128]

111. At the time of these developments, we were not aware of much attention being paid to their fine details within Parliament (and in particular from the perspective of the suitability of the VTE to be a forum for Council Tax Reduction appeals).[129] In Select Committee terms, the Justice Committee had no direct responsibility for oversight of this or related questions, which instead belonged to the Communities and Local Government Committee. That Committee held an inquiry in December 2012 on the 'Implementation of welfare reform by local authorities', to which the AJTC submitted evidence.

---

[124] The administration of local government valuation is devolved. The Welsh Government largely replicated the new English situation by creating jurisdiction within the Valuation Tribunal for Wales for appeals concerning Council Tax Reduction Schemes, whereas in Scotland the situation remains unclear despite the implementation of the reforms.

[125] Local Government Finance Act 2012, Schedule 4, Paragraph 2

[126] Angela van der Lem, MoJ Deputy Director for Administrative Justice Policy, in response to Lord Bichard: Transcript of SLSC oral evidence session, p. 12

[127] As enacted in the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2013 - S.I. 2013/465

[128] AJTC response to statutory consultation on VTE rule amendments, February 2013

[129] Some questions were raised regarding the VTE's role by the Earl of Lytton when the Schedule 4 amendment was introduced. The Minister promised to write to him: Hansard HL, 19/07/2012, Col. GC185

112. Whilst it is not necessary here to discuss the substantive arguments the AJTC raised, the point to note is that the CLG Committee decided in its subsequent report not to address the issues the AJTC raised at all.[130] We can only speculate on the reasons for that decision but it seems likely to us that the Committee would not have felt prepared or ready to engage with an admittedly technical and legalistic subject matter which, it might well have thought, would have been more suitably dealt with by other bodies.

The role of Select Committees

113. We believe this example highlights the danger of a scrutiny gap developing in future. The AJTC currently exists to draw the cross-departmental strands of administrative justice together and it is "one step removed from the 'front line' and able to look at procedures and practice across many fields".[131] In its absence, the Justice Committee's remit will not extend to all relevant areas, being limited instead to oversight of MoJ policy initiatives, its overall perspectives on administrative justice as laid down in the SWP, and the operation of HMCTS tribunals.

114. We therefore hope that all departmental Select Committees will now place new or renewed focus on administrative justice (and on the importance of securing systematic oversight and the protection of user interests) in their assessment of government initiatives or legislative changes impacting upon the system. For some Committees, such as the Work and Pensions Committee, this is already familiar territory. For others, consideration of rights of appeal, tribunals and similar may be outside of typical experiences.

115. Meanwhile we recognise the distinct and crucial role of the Committees concerned with the merits of secondary legislation.[132] As regards amendments to tribunal and inquiry rules and procedures secured through Statutory Instrument, we believe that these Committees will now have an even greater importance in securing the adequate scrutiny of the legislation before it is enacted. This is especially so in respect of the rules of non-HMCTS tribunals, which will no longer be subject to AJTC comment and do not fall within the remit of the Tribunals Procedure Committee, which advises on changes to the rules of HMCTS bodies.

Tribunals outside the centralised system

116. The issue of how the tribunals operating outside of the HMCTS system are to be overseen or monitored after AJTC abolition has been a key question throughout the parliamentary scrutiny process. The SLSC made increasingly clear that it was concerned about this matter in particular, and it featured prominently in the oral evidence session. The Minister's subsequent letter of 16th May

---

[130] CLG Committee: *Implementation of welfare reform by local authorities* (Session 2012/13, HC 833(i), 03/04/13)

[131] Professor Colin Reid in evidence to the Justice Committee, cited by the Committee (no. 1), *Volume II (Written Evidence)*, p.6

[132] The SLSC (HL), the Statutory Instruments Committee (HC) and the Joint Committee on Statutory Instruments

appended a list of 24 such tribunals, explaining what the MoJ was proposing to do in respect of them.[133] Some, such as the Foreign Compensation Commission, have already been abolished; others may also sit far less often.[134] The Justice Committee in any case noted that the capacity of the MoJ to offer oversight of non-HMCTS bodies is "highly questionable", and especially when set against the background of limited resources.[135]

117. Even so, the MoJ's statement to the Justice Committee that non-HMCTS tribunals would be subject to "light-touch" review must be of concern.[136] This is because the non-HMCTS tribunals include some which have a very significant impact – whether this is assessed in numerical terms having regard to the volume of appellants, or rather in terms of the likely importance appellants would attach to hearings in these tribunals, or both. School admission appeal and exclusion review panels, for example, have an obvious importance for parents seeking a favourable outcome for their children;[137] and the decisions of the Traffic Commissioners can directly affect individual livelihood and conditions of road safety.

Transfers into the First-tier Tribunal

118. The MoJ has indicated that, in respect of admission and exclusion panels, the Traffic Commissioners and other tribunals, it does not intend to integrate the bodies into the First-tier Tribunal. Indeed, it is stated altogether that, as regards 12 out of the 24 tribunals listed in the appendix to the Minister's letter, "there are no plans" to make transfers into the centralised system. It is far from clear, therefore, how in fact the MoJ intends to meet its third objective of the SWP regarding active consideration of the benefits and costs of transfer. It is certainly not easy to say how the indicated approach matches with the earlier assurance given in the explanatory document that "almost all remaining central Government tribunals which are outside of HMCTS [either] have been…transferred into HMCTS, will be, or are being given further consideration for transfer in".[138]

119. We should note that as a general rule we firmly support the integration of tribunal jurisdictions into the First-tier Tribunal. This would typically provide for harmonisation, consistency of procedural approach and, most important where relevant, "ensure a separation between the tribunal and the sponsoring department or public authority".[139] In apparent contrast to the view taken by

---

133 No. 3, p. 32 *et seq*

134 The Ministry notes, for example, that the Mines and Quarries Tribunal has not heard appeals for 20 years.

135 No. 1, paragraph 25

136 Cited by the Committee (no. 1), at paragraph 19

137 According to official Department for Education figures, in 2010/11 in England 46,950 admission appeals were launched in respect of admission decisions for maintained primary schools (including infant classes). 32,355 appeals were heard by panels, and 7,380 (22.8% of those heard) were determined in favour of the parents.

138 See: paragraph 49, above

139 SWP, paragraph 45

the MoJ, we would generally regard these as "clear benefits"[140] of transfer and so do not necessarily accept that the creation of the Property Chamber in July 2013 should represent the "last major plank"[141] of the unified structure.

On-going scrutiny

120. Aside from the issue of transfer there is the question of oversight. We have already expressed our concerns regarding the robustness (or otherwise) of assurances given as to the extent of MoJ liaison with other government departments.[142] Our concerns remain the same in this context. Moreover, if the review is to be "light-touch" then we suspect that important issues of principle are liable to slip under the radar. We cite by way of example our views on the extent to which the appeal panels commissioned by Academy Schools can be perceived to be independent, a subject on which we have recently corresponded with David Laws MP, the relevant Minister.[143]

121. The MoJ has stated that it "*will*...carry out visits to those [non-HMCTS] bodies of particular concern or [to] those which may suggest good practice that could be extended to other parts of the system".[144] We invite the incoming Chair of AJAG to consider whether AJAG members may have a role to play in this exercise.

122. The MoJ has accepted that its annual reporting to Parliament will include comment on "the position of those tribunals outside of the unified system".[145] We welcome this and invite AJAG to consider whether it wishes to comment also.

Considerations for Scotland and Wales

123. Another fundamental question following the abolition of the AJTC is of how the MoJ will replicate our functions as a GB-wide body with specific operations in Scotland and Wales. It should be noted that the Scottish and Welsh Committees of the AJTC are not free-standing bodies, but instead incumbent parts of the AJTC as a whole.

124. It was consequently not open to the MoJ to seek abolition in Westminster without securing the consent of the Scottish and Welsh Governments. In order to secure this consent, the Ministry entered into agreements with the respective Governments to fund interim successor bodies taking over from the AJTC's Scottish and Welsh Committees, initially at least on a non-statutory basis. The MoJ intends to negotiate protocols for how the Lord Chancellor will liaise and consult with these successor bodies on relevant matters.[146]

---

[140] *Ibid.*

[141] SWP, p. 3 (Ministerial Foreword)

[142] See: paragraph 52 *et seq.*, above

[143] The AJTC Chair, Richard Thomas, originally wrote to the Secretary of State for Education. The letter (February 2013) explains the issues of principle at stake.

[144] MoJ: supplementary evidence to the Justice Committee, paragraph 16 – cited by the Committee (no. 1), *Volume II (Written Evidence)*, p. 65

[145] No. 3, p. 32

[146] See: paragraphs 28 - 29, above

125. As the Justice Committee recognises, the fact of these negotiations for the establishment of the successor bodies (which would in their turn be within the legislative oversight of the Scottish Parliament and Welsh Assembly) categorically does not relieve the MoJ of further responsibility for the affairs of administrative justice in Scotland and Wales, nor for relevant "cross-border" issues. Correspondingly, in so far as the MoJ has continuing responsibility and authority within Scotland and Wales the Westminster Parliament remains the primary body for ensuring that the MoJ is held to account.

The MoJ's sole responsibilities in Scotland and Wales

126. The MoJ's continuing role within Scotland and Wales can be seen as being made up of two components. The first concerns its sole responsibilities. These include most prominently the provision and administration of a number of tribunals (the 'non-devolved' or 'reserved' tribunals) - most obviously the social security tribunals concerned with eligibility for the variety of benefits administered by the UK Government, employment tribunals and the immigration and asylum tribunals.

127. In Scotland, for example, a social security appeal would be heard in the first instance by the First-tier Tribunal (Social Security and Child Support). Further appeals would lie to the Upper Tribunal (Administrative Appeals Chamber), and then, exceptionally, to the Inner House of the Court of Session. HMCTS (and therefore ultimately the MoJ) are directly responsible for the First-tier (SSCS) and Upper Tribunal (AAT) wherever and whenever convening in Scotland. Save that appeals would lie to the Court of Appeal from the Upper Tribunal, the same is equally true of Wales.

128. It follows that the MoJ is accountable for the manner in which such tribunals are administered in the devolved nations, as well as for policy initiatives concerning the tribunals so far as impacting upon Scotland and Wales. To use some straightforward examples, the MoJ – whether unilaterally or through HMCTS - is responsible for ensuring that the needs of Welsh speakers are fully met within reserved tribunals sitting in Wales;[147] and it is also its duty to ensure that the significant variations in the needs and distribution of the population are duly recognised both in the choice of Welsh tribunal centres and in the facilities offered to their users.

The MoJ's joint role in Scotland and Wales

129. The second aspect of the MoJ's continuing role is more difficult to precisely pin down or categorise. It flows from the fact that the MoJ (and indeed the UK Government generally) continues to bear responsibility for a number of important aspects of the administrative justice system in Scotland and Wales, and cannot therefore fail to engage closely with the Scottish and Welsh Governments which take on the executive function for the remaining aspects. To that end, the Ministry recognises that it will need to "work closely" with the Scottish and Welsh Governments

[147] A member of the AJTC Welsh Committee sits on the Lord Chancellor's Standing Committee for the Use of the Welsh Language.

"to identify the best approach to overseeing the system and how it operates and coheres across borders".[148] It should be remembered, however, that lines of distinction between reserved and devolved areas are not always sharply drawn in practice. This can be because of the inevitable consequences for devolved government activity and policy flowing from UK Government decisions in reserved fields. The administrative justice system is an area in which these boundaries can become complicated and, potentially at least, blurred.

130. The MoJ states that it is committed to ensuring an overview of the entire system of administrative justice, including matters not within its departmental purview.[149] In England, the Ministry is in a position to take a lead on administrative justice overview in this respect. As regards Scotland and Wales, however, the Ministry simply *cannot* make such a claim to begin with, since constitutional responsibility for the administrative justice system is shared between it and the devolved administrations (with the devolved governments having a central, if not leading role). And yet, all the same, this fact cannot be allowed to justify a limited or non-engaged response by the MoJ on the question of *systematic* oversight of administrative justice, even though such oversight cannot be ensured solely by its own work but only in cooperation with the Scottish and Welsh Governments and the respective AJTC successor bodies. This must be so, since any failure to ensure systematic oversight in Scotland and Wales (through a less than proactive engagement by MoJ with the national governments) would lead to users in those countries obtaining an unequal degree of oversight protection as against their English counterparts.[150]

131. It is intended that negotiations between the MoJ and Scottish and Welsh Governments will lead to protocols for the governance of their mutual relationships. We are unaware, however, of these protocols' nature and content. The Ministry suggested in advance that emphasis would be placed on the accessibility of the reserved tribunals to users and that discussions will be underpinned by a series of meetings (both bi-lateral and between all four administrations, the fourth being the Northern Ireland Executive).[151]

132. The MoJ has acknowledged the lack of detail in respect of these arrangements and the "concerns expressed by the Scottish and Welsh Committees of the AJTC that changes in this area will disadvantage users".[152] We welcome this openness, and equally the Government's commitment to ensuring that the Administrative Justice Advisory Group includes Scottish and Welsh representation. The MoJ's acknowledgement that there is "more

---

148 SWP, paragraph 42

149 See: paragraph 49, above; see also the Minister's assurances to the SLSC that "no part" of the administrative justice system will be left out of new oversight arrangements (no. 54)

150 See: SCAJTC evidence to the Justice Committee, cited by the Committee (no. 1), *Volume II (Written Evidence),* p. 4

151 MoJ: supplementary evidence to the Justice Committee, paragraph 10 – cited by the Committee (no. 1), *Volume II (Written Evidence)*, p. 64

152 *Ibid*. paragraph 11

detail to be added"[153] to these plans makes it difficult to judge how it will ensure that cross-border issues will in fact be identified and addressed.

133. A particular question of concern relates to how the AJTC successor bodies will be able to develop their own programmes for oversight work. If the MoJ's policies regarding its oversight of operations in Scotland and Wales continue to lack detail, then it may prove difficult for the successor bodies to establish to what extent, and in what ways (if any) they are themselves to keep reserved tribunals and other Westminster-controlled aspects of the system under review

134. Overall, we share the Justice Committee's "reservations about the extent to which the Ministry of Justice can and will monitor administrative justice in reserved sectors in Scotland and Wales";[154] and we invite the Justice Committee to keep this aspect under review.

135. We also invite the Justice Committee to seek contributions from the Scottish and Welsh Governments, as well as their AJTC successor bodies, whenever it considers administrative justice questions with a cross-border extent.

The administration and governance of HMCTS

136. The MoJ's case in favour of AJTC abolition has largely been centred on the benefits which it is said have been secured for users since the structures of Her Majesty's Court Service were extended to incorporate the former Tribunals Service (thereby creating HMCTS). The argument is that users are afforded a "clear level of protection" by the systems in place for the administration of tribunals by HMCTS, an organisation which is subject to "robust governance arrangements"[155] to ensure that it is accountable and effectively managed. Of particular importance in this respect is that the HMCTS board includes two judicial representatives and one independent non-executive Chair, and that it reports both to the Lord Chancellor and the Lord Chief Justice. Consequently, the Minister felt able to conclude that "HMCTS can, and does, provide for effective independent oversight of tribunals".[156]

Lack of clarity as to HMCTS' role

137. The AJTC has challenged this analysis for a variety of reasons. The first is that emphasis is placed on HMCTS as *overseer*. By contrast, in previous comment (when the SWP was published) the MoJ stated 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".[157]

---

153 *Ibid*.

154 No. 1, paragraph 25

155 Helen Grant MP to SLSC: no. 3, p.30

156 *Ibid*. p. 28

157 SWP, paragraph 35 (emphasis added)

138. In other words, there seems to be uncertainty as to whether HMCTS is an administrator or an overseer of the tribunals system, and even as to whether there is much need for an overseer in the first place.

139. Moreover, we do not agree that it is clear that tribunal appellants are *protected* by HMCTS. HMCTS is an organisation tasked with administering the courts and tribunals making up the majority of the judicial system. It may consider user feedback and seek to act upon it where a sufficient business case is established for doing so, but that does not lead to the conclusion that HMCTS safeguards the interests of appellants.

140. It follows that the nature of HMCTS' deemed role in relation to oversight of tribunals after AJTC abolition is unclear. We invite the Justice Committee to seek clarification of these governance aspects in their future scrutiny of the work of HMCTS.

Lack of independence

141. We reject any suggestion that HMCTS is independent of government. HMCTS is not a judicial body and it does not operate on an arms-length basis from its sponsor department. Rather, we believe that HMCTS as an executive agency of the Ministry is "as much part of government as the MoJ itself",[158] with MoJ Ministers being accountable within Parliament for what HMCTS does in the same way as they are for what their departmental officials do. We accept, of course, that the constitution of the HMCTS Board provides some independence in the *governance* of the agency.

142. However whatever the correctness of our view on the independence of HMCTS, such is not relevant to the separate question of the existence of and need for a body to offer independent *advice* to government, which is currently offered by the AJTC and in future could only possibly be offered by the AJAG. On this question arguments relating to the status of HMCTS do not address the point, as HMCTS is not an advisory body[159]

143. We invite AJAG to consider whether it would be helpful for its members to observe HMCTS tribunal hearings taking place in public from time to time, as AJTC members have done, to gain first-hand experience of the range of jurisdictions administered by the agency.

The distinctive nature of tribunals

144. At the time of the merger of the Courts and Tribunals Services the AJTC expressed concern that this would lead to the distinctive characteristics of tribunals (which should be typified by user-friendliness and simplicity of proceedings) being undermined.[160] In particular, we believed that the rationalisation of the tribunals'

---

[158] SCAJTC evidence to the Justice Committee, cited by the Committee (no. 1), paragraph 7

[159] No. 107

[160] AJTC response to MoJ consultation *A Platform for the Future* (on the merger of the Courts and Tribunals Services), February 2011

estate risked the absorption of tribunals into criminal court buildings without sufficient attention being given to the need to distinguish between the two, and that ultimately there was a risk of HMCTS prioritising court business over tribunal business.

145. At this stage the changes have taken place too recently for a clear picture to emerge as to whether our concerns were well-founded. Moreover, although some concerns have already emerged, it is especially difficult to oversee in detail steps taken by HMCTS to make individual court venues 'tribunal friendly' – whether through the provision of signage as a means of distinction from the courts sitting in the same building or in the use of separate waiting areas. But at a general level continuing scrutiny of HMCTS should in our view involve assessment of how HMCTS reinforces the distinctive nature of tribunals in its operations.

146. In particular, whilst we understand the economic case for closing down some separate tribunal venues, we are unnerved by decisions taken in some places to convene tribunals in what are otherwise Magistrates' Courts buildings. Those who are already in a vulnerable situation should not face the risk of their anxieties being exacerbated by a perception that they are 'on trial' or are considered culpable in some way.

147. Moreover, it is open to HMCTS to be imaginative in its use of court rooms for tribunal hearings. For instance, if a venue's business in a particular place indicates that tribunals will be busier than courts, then a business case would seem to exist for adjustments to be made so as to reflect the more informal nature of the tribunal proceedings accounting for the majority of the work.

The future of HMCTS

148. We have noticed with interest the plans which are reportedly being made to further reform HMCTS.[161] It is at this stage unclear what is envisaged but we have noted that references to the reforms so far have concerned the courts and not tribunals.

149. We are clearly of the view that private sector involvement in the administration of courts and tribunals should not result in any movement away from core underlying values of fairness, accessibility or efficiency; or furthermore from the wider *Principles for Administrative Justice* which we have already outlined.[162]

150. It remains to be seen how the reforms, when announced, match with the assurances given to Parliament that HMCTS is supported by "robust governance arrangements" under which the oversight of tribunals is to be maintained and the interests of the user protected.[163] Rather, as seen in the experience of some Work Capability Assessments, it can potentially be more difficult for improvements to be secured when the State acts as contract

---

[161] See, e.g.: "Courts to be privatised in radical justice shake-up" - *The Times*, 28/05/2013

[162] See: paragraph 64 *et seq*., above

[163] No. 155/156

manager rather than service provider.[164] We invite the Justice Committee, in its scrutiny of whatever reform proposals may be announced, to have these issues especially in mind; and especially by having regard to the relatively low priority apparently assigned by the MoJ to administrative justice,[165] as well as the need for the distinctive characteristics of tribunal justice to be protected.

HMCTS performance

151. There are anticipated increases in demand within some of the HMCTS tribunals now and in the near future, and most obviously in the FTT (Social Security and Child Support). As the SWP notes, despite a reduction in overall HMCTS tribunal receipts in 2011/12, "it is likely that volumes will rise again after 2013".[166] Meanwhile, other Chambers of the First-tier Tribunal are seeing a downturn in demand, notably the Immigration and Asylum Chamber.

152. As we noted earlier, the President of the FTT (Social Security and Child Support) reported recently that the incoming number of appeals within his jurisdiction is expected to be 807,000 between 2015 -16.[167] As the President went on to acknowledge, this can only amount to a rough estimate of the number of people likely to appeal following a removal or reduction of entitlement as a result of the welfare reform programme.[168] All the same, 807,000 cases is clearly an extremely challenging estimate of anticipated business for a single Chamber of the First-tier Tribunal when in 2011/12 the incoming caseload within *the entirety* of HMCTS tribunals was 740,000.[169] There must be serious concerns as to the ability of the system to cope on such a basis, notwithstanding the investment assured from the DWP to support the handling of the situation. It also begs the question of whether the anticipated surge in demand would make the next few years an unsuitable time for the introduction of fundamental changes to the way in which HMCTS is operated (whether through private sector delivery or otherwise).[170]

153. We are very much aware of the efforts being made by HMCTS to ensure the clearance of cases through the system. The number of cleared cases has increased in some of the busiest jurisdictions, such that the Ministry was able to assert that "the level of disposals has increased every year since 2007/08 and is the

---

[164] See: paragraph 39, above. The PAC report (no. 42) concluded that "the [DWP] is not using all the mechanisms it has at its disposal to manage the contract for medical assessments effectively" – p. 3 (Executive Summary). We also note the Justice Committee's recent conclusions in respect of the outsourcing of translation services by the MoJ (2012/13 Session, HC 645, 06/02/2013).

[165] No. 24

[166] SWP, paragraph 25

[167] No. 45

[168] SPT Annual Report 2013, p.

[169] SWP, paragraph 25

[170] The Minister has stated that, in terms of HMCTS governance, organisation, efficiency/effectiveness and its operation for users, "we are in a pretty good place" (Transcript of SLSC oral evidence session, p. 6). It is doubtful whether such an assessment of HMCTS' *future* operations could be made without factoring in the scale of its anticipated increased workload and its simultaneous need to secure substantial operational efficiencies.

highest to date".[171] This is a situation worthy of positive comment and is due in no small part to the determination of HMCTS staff to drive improvements and efficiencies, including through such measures as Saturday sittings. However, given the corresponding acknowledgement that "the overall caseload outstanding... has continued to rise"[172] it seems probable that HMCTS will face significant operational difficulties in the near future, notwithstanding its recent achievements which would appear to have demonstrated overall improvements had the appeal rates remained constant.

154. Over such a potentially problematic period parliamentary scrutiny focused on HMCTS and its work will be valuable. Certain principles underpinning the tribunals system are in our view non-negotiable, in that, without them, the system cannot be assessed as functioning properly.

155. It should not simply be an ambition, for example, that cases should be resolved within reasonably speedy time frames. Rather, the fact that one should be able to obtain determination of one's civil rights and obligations without unreasonable delay (Article 6 ECHR) potentially assumes greater importance when the relevant determination concerns legal rights to obtain support from the State owing to conditions of disability or other vulnerability. Time is then of the essence. And neither can the response to strains upon the system be to limit access to that system or to so restrict judicial time as to call the fairness of some tribunal decisions into question.

156. Recent AJTC visits have revealed substantial delays in some instances, including a period of 544 days in one case between the date on which the appeal was lodged with the DWP and the date of the tribunal hearing, and periods of 417 days and 357 days in other cases.[173] Such figures show that even within current circumstances there must be real concerns as to the timeliness of some appeal hearings. It is not therefore difficult to envisage how delays of this length may become more commonplace due to the increased burdens the system is likely to face. It follows that scrutiny of the administration of tribunals by HMCTS must involve consideration of the extent to which these essential conditions of an effective justice system are being realised.

Performance statistics

157. Delays of such length can of course arise from all manner of circumstances, including ineffective management of the case by the DWP, judicially-ordered adjournments, and a failure by appellants themselves to engage with the tribunal. To ascertain the extent of HMCTS (or DWP) responsibility for poor performance within the tribunals sector therefore requires the provision of sufficient and accurate statistical information. Without this, the ability of Parliament to keep HMCTS operations under effective review is likely to be impeded.

---

[171] SWP, paragraph 28

[172] *Ibid.*

[173] AJTC Welsh Committee visits to FTT (SSCS) venues in Port Talbot (12/02/2013) and Aberystwyth (21/02/2013).

158. We therefore regret what we consider to be the reduced extent (and ultimately utility) of HMCTS-provided data relating to its own performance. We say this in particular by comparison with the quality and detail of statistics previously provided by the Council on Tribunals/ AJTC and subsequently the former Tribunals Service in its Annual Reports. The 2007/08 Annual Report, for example, lists various tribunal jurisdictions (as they then were), complete with percentage figures recording the Service's success or otherwise in meeting a number of 'performance indicators' in relation to the tribunals concerned.[174]

159. It was thus a simple matter for those assessing the material to determine the Tribunals Service performance in relation to individual jurisdictions. For example the agency was significantly above its target of 75% for the "percentage of appeals where the first hearing takes place within 14 weeks of the receipt" of the case at the social security tribunal (87%). Conversely, it would have been entirely straightforward to deduce that the target rate of 75% for the "percentage of cases disposed of within 70 weeks of receipt" at the Adjudicator to HM Land Registry had not been met (53%). [175]

160. By contrast, in HMCTS' 2011/12 Annual Report performance indicators were only set for three Chambers of the First-tier Tribunal (including the busiest Social Entitlement Chamber), as well as for Employment Tribunals.[176] Consequently it was not possible to assess the quality of HMCTS performance or the extent of any delay in the many other jurisdictions now within the FTT.

161. Meanwhile, supplementary quarterly statistics for tribunals are being published by the MoJ but these also combine the data for jurisdictions other than the largest three into a single figure. These jurisdictions have little in common with each other and this diminution of the granularity of available tribunal data has realised the AJTC's fear of a "one size fits all" approach when courts and tribunals were administered together.

162. Perhaps inevitably the performance indicators in Annual Reports can only provide generic information, with a particular emphasis on end results and ultimately case disposals. Of course it is understandable that the highest volume jurisdictions should be the operational priority of the agency but it is a matter of concern that the loss of data available for many years to Parliament and specialist commentators means that opportunities for external scrutiny are diminished.

163. In our view, unless more detailed statistics are to be provided, the purpose of providing any statistics in the first place (i.e. to enable ready assessment of performance) is likely to be undermined. Against this background we commend the annual reports published by the Senior President of Tribunals as these provide a judicial perspective and a narrative account from Chamber Presidents of the work of individual jurisdictions. We consider it vital that these reports should not be lost in any further reform of

---

[174] Tribunals Service Annual Report 2007/08, Annexes B - D (p. 95 *et seq.*)

[175] *Ibid.* Annex D (p. 98)

[176] HMCTS Annual Report 2011/12, p. 9

HMCTS governance. We are pleased that the Senior President is represented on AJAG and we hope that the judiciary will continue to actively participate in the group.

164. We invite the Justice Committee, in future scrutiny of the work of HMCTS, to consider the utility of the statistical data provided by HMCTS in relation to tribunals.

165. We further invite the Committee to consider taking evidence from the Senior President of Tribunals as part of any relevant inquiry to provide it with a judicial perspective on tribunal performance and the issues and challenges they face.

Annex A:
The Functions of the AJTC

1. The AJTC is a non-departmental public body sponsored by the Ministry of Justice (MoJ). It was established by provisions in the Tribunals, Courts and Enforcement Act 2007,[177] and has acted on an 'arms-length' basis from its sponsor department throughout its existence. It operates in conjunction with its Scottish and Welsh Committees, some of whose members are also members of the main AJTC. The Committees exist to fulfil AJTC functions in their respective countries and to advise devolved governments in much the same way as the AJTC advises the UK government. The Parliamentary Ombudsman is an ex-officio member of both the AJTC and its two Committees, whilst the Scottish Public Sector Ombudsman and Welsh Public Sector Ombudsman are ex-officio members of their respective Committees.

2. The AJTC's primary functions, as provided by the 2007 Act, are:

   (a) to keep the administrative justice system under review;

   (b) to consider ways to make the system accessible, fair and efficient;

   (c) to advise the Lord Chancellor, the Scottish Ministers, the Welsh Ministers and the Senior President of Tribunals on the development of the system;

   (d) to refer proposals for changes in the system to those persons; and

   (e) to make proposals for research into the system.

3. The AJTC also exercises functions regarding the operation of so-called 'listed' tribunals and statutory inquiries. As part of this, government departments are required to consult the AJTC on procedural rules drawn up for listed tribunals before they are brought into effect.[178] 'Listed' tribunals are those which legislation places within the oversight of the AJTC and its Committees, being the First-tier Tribunal, the Upper Tribunal[179] and various others.[180] These others include devolved tribunals in Scotland and Wales and other English or GB-wide tribunals which remain outside of the First-tier/Upper Tribunal model. The AJTC has no formal remit in Northern Ireland in respect of any matter falling within the competence of the Stormont Assembly, meaning that its jurisdiction extends only to immigration and other UK-wide tribunal forums. In respect of the rest of the Northern Irish system, it has developed relationships with those with responsibility for administrative justice there.

---

[177] Notably s.44 and Schedule 7 – to be repealed by the abolition Order

[178] The AJTC's response to the statutory consultation on 2013 amendments to the rules of the Valuation Tribunal for England, for example, led to improvements being made on behalf of the user – paragraph 110, above.

[179] As introduced by the 2007 Act and expanded by subsequent legislation

[180] As provided for in the 'Listed Tribunals' Orders: S.I. 2007/2951; S.I. 2007/2876 (Wales); and S.S.I. 2007/436 (Scotland) – to be revoked by the abolition Order

4. The Leggatt Report in 2001 proposed that what was then the Council on Tribunals (CoT) should be re-established with a more extensive role so as to become the "hub of the wheel" of administrative justice.[181] The CoT and its Scottish Committee had first been established by the Tribunals and Inquiries Act 1958, thereby setting the combined longevity of the CoT and AJTC at 55 years. The CoT was founded further to the implementation of the *Report of the Committee on Administrative Tribunals and Enquiries* headed by Sir Oliver Franks.[182] In terms of tribunals and inquiries, the CoT had a similar role to that exercised by the AJTC but without the AJTC's additional focus – as stemming from the 2007 Act – on administrative justice, and government decision-making, as a whole.

5. Appointments to the Cot always had regard to the need for representation of the interests of people in Wales. In 2008 the Welsh Committee of the AJTC was set up further to provisions within the TCE Act. These recognised the substantially distinct administrative justice landscape which has come to exist in Wales further to increased Welsh devolution.

[181] No. 15

[182] July 1957, HMSO, Cmnd. 218 (reprinted 1993)

Annex B:
The Abolition Process

1. In July 2010 the Minister signalled the intention to abolish the AJTC as part of the government's reform of public bodies. A consultation on the proposal was held in 2011, a response to which was published by the MoJ in December 2011.[183] This response was released immediately following the enactment of the Public Bodies Act 2011 which scheduled the AJTC for abolition. It noted that "the majority of respondents expressed the view that the AJTC should not be abolished".[184] Nonetheless, the Government remained intent on seeking the abolition of the AJTC and expressed as much in the response.

2. The Abolition Order was not in fact laid for a further year (18th December 2012). The delay was presumably due in part to the time spent by the MoJ in producing its latest Strategic Programme for its administrative justice work (SWP). This was published on the same day as the draft Order.[185] In the meanwhile, the Public Administration Select Committee had held its inquiry into the future of the AJTC.[186] The report of March 2012 found that "some functions of the AJTC have been taken over by HMCTS" but disputed the Government's arguments that the AJTC's policy work duplicated that performed, or to be performed, by the MoJ itself. It concluded that the "judgment for the House [of Commons] is not just whether the AJTC should be abolished, but also whether sufficient and appropriate provision has been made for the continued performance of any necessary functions that it previously carried out".[187]

3. In early 2013 the Justice Committee and the Secondary Legislation Scrutiny Committee (SLSC) together took up the responsibility for parliamentary scrutiny of the draft Order, complete with associated government commitments in the explanatory document to the Order and the SWP. The Justice Committee concluded that there were "certain functions" of the AJTC which could be transferred to the MoJ "without significant detriment" to the administrative justice and tribunals system, but that the proposed abolition did not ultimately meet the requirements of the Public Bodies Act.[188] The Committee proposed that the AJTC should have a more "restricted, refocused role concentrating on the accessibility of the system...and the need to reduce dependency on systems of redress by promoting better decision-making".[189]

---

[183] MoJ: *Response to consultation on reforms proposed in the Public Bodies Bill*, Cm 8235, 15/12/2011

[184] *Ibid.* p. 10, paragraph 3

[185] No. 22

[186] No. 5

[187] *Ibid.* p. 3 (Executive Summary)

[188] No. 1, p. 3 (Executive Summary)

[189] *Ibid.* paragraph 26

4. The Government provided a "very brief" response to the Committee, indicating its intention to continue to pursue the abolition policy in Parliament. The response did not engage with the substance of the Committee's reported conclusions and reservations at all.[190]

5. The SLSC in its report of January 2013 recommended that the MoJ should publish a "mapping exercise illustrating all the bodies currently under the aegis of the AJTC and showing their status in relation to the unified tribunals system" established by the 2007 TCE Act.[191]

6. The MoJ provided the SLSC with the requested map, which was appended to the Committee's next report.[192] Following a government correction of this map, the Committee invited the Minister (Helen Grant MP, Parliamentary Under-Secretary) to attend an oral evidence session to elaborate on the Government's intentions. This session took place in May 2013, after which the Committee reported again. In the meanwhile, the Minister had written to the Committee with further details and assurances.[193]

7. The SLSC expressed that it was "considerably surprised" by the Minister's stated attitudes concerning the way in which the MoJ had handled the parliamentary scrutiny of the draft Order.[194] It concluded that the statutory conditions for abolition had not been met and that "the case for the complete abolition of the AJTC" was "not made [out]".[195]

8. In respect of the devolutionary complications and the necessary Consent Motions, the Scottish Parliament affirmed the Consent Motion for abolition in May 2013 and the Welsh Assembly did the same the following month, paving the way for the progress of the Order in Westminster. The Scottish and Welsh Committees of the AJTC have engaged with the governments of their respective nations where appropriate, for example in relation to the future work of the successor bodies outlined at paragraphs 28 – 29 of this Response.

9. The Delegated Legislation Committee of the House of Commons voted in favour of abolition on 3rd July 2013. The vote in the House of Lords is expected to follow shortly after the publication of this Response.

---

190 No. 4

191 No. 28, paragraph 30

192 No. 106, pp. 14 et seq. It should be noted that the map contains errors. For example, the AJTC has not provided "advice on tribunal performance and policy" in respect of the High Court (whether of England and Wales or Northern Ireland) or of the Outer House of the Court of Session – contrary to the assertion on p. 18. These senior courts are not listed tribunals as regards which the AJTC advises government. Neither has the AJTC ever had any responsibility for the Solicitors' Regulatory Tribunal.

193 See: SLSC (2nd Report of 2013/14 session): no. 3, p. 26 *et seq*.

194 *Ibid*. paragraph 7. The Minister had said to the Committee in oral evidence that the abolition process had been handled, in her view, "effectively, properly, openly and honestly" and had also been efficient – Transcript, p. 26 (Helen Grant MP in reply to Baroness Morris).

195 No. 3, paragraph 31

10. We believe that a summary of the abolition process would be incomplete without comment on the severe difficulties the AJTC has faced in trying to meet its statutory obligations, given the long uncertainties regarding its very existence which have hung over it. We wish to note that the confused and repeatedly postponed picture regarding if and when the AJTC would be abolished has been the background for the organisation's work for what is now more than half of the present parliamentary term.[196] This has had significant repercussions in terms of resources and staff morale. But whilst inevitably the scale of our operations has reduced, we have always sought to discharge the functions which Parliament bestowed upon us as well as we could in light of the prevailing circumstances.

[196] We recognise SLSC's conclusion that the "proposed abolition of the AJTC has been poorly thought through": no. 3, paragraph 25

Annex C: The objectives of the MoJ Strategic Work Programme

On the governance of the administrative justice and tribunals system:

1. To strengthen arrangements with other departments and public bodies to oversee the development and delivery of administrative justice and tribunals policy.

2. To establish, encourage and maintain a user focus that supports open policy making.

On tribunals outside of the unified system and new appeal rights:

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 [centralised, HMCTS] system.

4. To ensure that new appeal rights proposed by government are fair, efficient and accessible.

On the funding of tribunals:

5. To scope, develop and implement clear, evidence-based tribunal funding and fee models to reduce demands on the tribunal system.

On improving initial decision-making:

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

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

On enhancing the proportionate operation of the administrative justice system:

8. To promote early and proportionate dispute resolution across government.

On maintaining a user focus further to the second objective:

9. To develop improved information on and insight into administrative justice users to inform work on each strand of the Strategic Work Programme.

10. To ensure our communications to users encourage efficiency, support fairness and enhance accessibility to the system, and to explore opportunities for digitising administrative justice processes to deliver the best service for users.

Annex D: Bibliography

AJTC publications

- *Framework Document* (2007) – available at: http://ajtc.justice.gov.uk/docs/AJTCFramework.pdf
- *Securing Fairness and Redress: Administrative Justice at Risk?* (2011) – available at: http://ajtc.justice.gov.uk/docs/AJTC_at_risk_(10.11)_web.pdf
- *Principles for Administrative Justice* (2010) – available at: http://ajtc.justice.gov.uk/docs/principles_web.pdf
- *Research Agenda for Administrative Justice* (2013) – available at: http://ajtc.justice.gov.uk/docs/AJTC-RA-Mar2013_WEB.pdf
- *Right First Time* (2011) – available at: http://ajtc.justice.gov.uk/docs/AJTC_Right_first_time_web(7).pdf

Correspondence

- Chairman's letter to Paul Gray, Chair of the Social Security Advisory Committee, on the information available to social welfare claimants, June 2013 – available at: http://ajtc.justice.gov.uk/docs/Paul_Gray_June_13_final.pdf
- Chairman's letter to the Secretary of State for Education on the independence of appeal panels convened by Academy Schools, February 2013 – available at: http://ajtc.justice.gov.uk/docs/Michael_Gove_letter_13_2_13.pdf

Consultation and other responses

- Response to the consultation on the merger of the Courts and Tribunals Services, February 2011 – available at: http://ajtc.justice.gov.uk/docs/response_to_CTiP_consultation_paper.pdf
- Response to the MoJ consultation *Judicial Review – Proposals for Reform*, January 2013 – available at: http://ajtc.justice.gov.uk/docs/JR_Consultation_final.pdf
- Response to the call for evidence by the Communities and Local Government Committee, further to its enquiry *Implementation of Welfare Reform by Local Authorities*, December 2012 – available at: http://ajtc.justice.gov.uk/docs/CLG_Committee_Submission.pdf
- Response to the call for evidence by the PASC, further to its enquiry *Complaints – do they make a difference?*, May 2013 – available at: http://ajtc.justice.gov.uk/docs/PASC_Evidence__Complaints_final.pdf

MoJ publications

- *Administrative Justice and Tribunals: A Strategic Work Programme* 2013 -16, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/162270/admin-justice-tribs-strategic-work-programme.pdf.pdf

- *Government Response to the Public Administration Select Committee Report on the future oversight of the administrative justice system*, Cm 8354, May 2012 – available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/162250/response-pasc-report-administrative-justice.pdf.pdf

- *Tribunal Statistics Quarterly* (October – December 2012): available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/177045/quarterly-tribs-q3-2012-13.pdf

- *Response to consultation on reforms proposed in the Public Bodies Bill*, Cm 8235, 15/12/2011 - available at: http://www.official-documents.gov.uk/document/cm82/8235/8235.pdf

Parliamentary publications

Justice Committee (HC)

- *Interpreting and translation services and the Applied Language Solutions Contract* (Session 2012/13, HC 645, 06/02/2013) – available at: http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/645/645.pdf

- *Scrutiny of the draft Public Bodies (Abolition of Administrative Justice and Tribunals Council)* Order 2013 (Session 2012/13, HC 965, 15/03/2013) – available at: http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/965/965.pdf

- Special Report: *Scrutiny of the draft Public Bodies (Abolition of AJTC) Order 2013: Government Response* (Session 2012/13, HC 1119, 25/04/2013) – available at: http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/1119/1119.pdf

Public Accounts Committee (HC)

- *Department for Work and Pensions: Contract Management of Medical Services*, (Session 2012/13, HC 744, 08/02/2013) – available at: http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/744/744.pdf

Public Administration Select Committee (HC)

- *Future oversight of administrative justice: the proposed abolition of the Administrative Justice and Tribunals Council* (Session 2010/12, HC 1621, 08/03/2012) – available at: http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpubadm/1621/1621.pdf

Secondary Legislation Scrutiny Committee (HL)

- 25th Report of 2012/13 session – *Draft Public Bodies (Abolition of AJTC) Order 2013* (HL 109, 31/01/2013), available at: http://www.publications.parliament.uk/pa/ld201213/ldselect/ldsecleg/109/109.pdf

- 32nd Report of 2012/13 session – *Government Response: Draft Public Bodies (Abolition of AJTC) Order 2013* (HL 146, 14/03/2013), available at: http://www.publications.parliament.uk/pa/ld201213/ldselect/ldsecleg/146/146.pdf

- 35th Report of 2012/13 session (HL 160, 26/04/2013), available at: http://www.publications.parliament.uk/pa/ld201213/ldselect/ldsecleg/160/160.pdf

- 2nd Report of 2013/14 session – *Public Bodies Orders: Public Bodies (Abolition of AJTC) Order 2013* (HL 8, 23/05/2013), available at: http://www.publications.parliament.uk/pa/ld201314/ldselect/ldsecleg/8/8.pdf

- Oral evidence session on the AJTC abolition Order, 16/05/2013 - Transcript available at: http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/2ndary%20LS%20transcript%2014-5-13%20Grant%20Wedge%20van%20der%20Lem%20final%20GW%20corrected.pdf

Work and Pensions Committee (HC)

- Oral evidence session on Employment and Support Allowance and the Work Capability Assessment (Session 2012/13, HC 769i) - available at: http://www.publications.parliament.uk/pa/cm201213/cmselect/cmworpen/769i/769i.pdf

Other publications

- Adler, Michael: *The Potential and Limits of Self Representation at Tribunals* (2008) – available at: http://www.esrc.ac.uk/my-esrc/grants/RES-000-23-0853/outputs/Download/b98a546f-0f7a-4e91-8e4f-b129ff4adc9f

- Cabinet Office Guidance for Government Departments in setting up new Ombudsman schemes (2010) – available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61197/guide-new-ombudsman-schemes.pdf

- Citizens Advice Scotland, *Offline and Left Behind: Digital Exclusion amongst Scotland's CAB Clients* (May 2013) – available at: http://www.cas.org.uk/system/files/publications/OFFLINE%20AND%20LEFT%20BEHIND%20INDESIGN.pdf

- Department for Education, School Admission Appeal statistics for local authority maintained schools in England 2010/11 – available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/167505/sfr11-2012.pdf

- Department for Work and Pensions, Impact assessment for reform to Disability Living Allowance, May 2012 – available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/174995/dla-reform-wr2011-ia.pdf

- Department for Work and Pensions, sample decision letter on a claim for Personal Independence Payment (PIP 7001) – available at: http://www.dwp.gov.uk/docs/pip-notification-pip7001.pdf

- HMCTS, *How to appeal against a decision of the Department for Work and Pensions* (SSCS1A) – available at: http://hmctsformfinder.justice.gov.uk/courtfinder/forms/sscs1a-eng.pdf

- HMCTS, Annual Report 2011/12 – available at: http://www.justice.gov.uk/downloads/publications/corporate-reports/hmcts/2012/hmcts-annual-report-2011-12.pdf

- Leggatt, *Tribunals for Users: One System, One Service*, Crown Copyright, March 2001 – available at: http://webarchive.nationalarchives.gov.uk/+/http://www.tribunals-review.org.uk/leggatthtm/leg-00.htm

- Senior President of Tribunals, Annual Report 2013 – available at: http://www.judiciary.gov.uk/Resources/JCO/Documents/Reports/SPT%20Annual%20Report_2013.pdf

- Tribunals Service, Annual Report 2007/08 – available at: http://www.official-documents.gov.uk/document/hc0708/hc08/0802/0802.pdf

Administrative Justice & Tribunals Council
81 Chancery Lane
London WC2A 1BQ

T: 020 7855 5200 F: 020 7855 5201

Email: enquiries@ajtc.gsi.gov.uk
www.justice.gov.uk/ajtc