Revised transcript of evidence taken before

The Select Committee on Secondary Legislation Scrutiny

Inquiry on

PUBLIC BODIES (ABOLITION OF THE ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL) ORDER 2013

Evidence Session No.1    Heard in Public    Questions  1 - 16

TUESDAY 14 MAY 2013

3.45 pm

Witnesses: Helen Grant MP, Alison Wedge and Angela van der Lem
Members present

Lord Goodlad (Chairman)
Lord Bichard
Baroness Hamwee
Baroness Morris of Yardley
Lord Norton of Louth
Lord Plant of Highfield
Lord Scott of Foscote

Witnesses

Helen Grant MP, Parliamentary Under-Secretary of State for Justice, Alison Wedge, Deputy Director and Head of Arm’s Length Body Governance Division, and Angela van der Lem, Deputy Director for Administrative Justice Policy at the MoJ

Q1 The Chairman: Minister, can I welcome you very much indeed and thank you for joining us? We are being recorded today, and a transcript of the evidence will be posted on our website in a few days. Could I please ask you to start by introducing your officials?

Helen Grant MP: Yes, with pleasure. To my left, I have Alison Wedge, who is head of the Arm’s Length Bodies Governance Division at the MoJ, and the lady sitting to my right is Angela van der Lem, who is Deputy Director for Administrative Justice Policy at the MoJ.

The Chairman: Thank you very much. We have asked you to come and are most grateful that you have, because we have had difficulty, as you know, in obtaining a clear picture of the effect of the proposed abolition of the Administrative Justice and Tribunals Council. The explanatory document laid with the order referred to a strategic work programme that was not published at the time of the laying of the order, and the impact assessment was calculated on the basis that the Administrative Justice and Tribunals Council would close on 30 September 2012, some two and a half months before the order was laid before the House. Your letter of 15 April was of particular concern, since it pointed out that there
were errors in the written evidence that you supplied in response to the Committee’s first report on the order. The Committee had drawn conclusions on the basis of that incorrect information, and so decided to ask you to explain the proposal clearly for the record for the House. The Committee has taken the view that the documentation that the Ministry of Justice has provided in support of this order has fallen very far below the standard that the House expects, and which we think the Government would wish to maintain. Do you wish to make any comment?

**Helen Grant MP:** I would like to hear the whole narrative that you are setting out to me, if that is possible, Lord Goodlad. If that is the end of the point, of course I will say something. If it is going to continue, it might be helpful if I could take all of the elements together, because you have already raised a number of issues.

**Q2 The Chairman:** One issue that remains unclear is when the post-AJTC arrangements will be complete for all the bodies currently under its umbrella, which is why we asked for the map. In your letter of 15 April you state that, “The governance … strand” in annex A of the work programme “is due to deliver in April 2013”. Could you please explain what you meant by that?

**Helen Grant MP:** To begin with, I would like to say that we are all grateful for the opportunity to come along today to give further clarification on the matter of the abolition of this body. I know it has caused concern. I know there has been a considerable level of scrutiny in relation to it, and I will do my best, with the officials I have with me today, to answer the questions that you have to the best of our ability. Where we cannot be as precise as I would like to be for you, then of course we will write to you with that information as soon as we possibly can.

Just to begin with, I would like to say that the body that we are considering abolishing is an advisory body. It is not an inspectorate, it is not a tribunal, it is not a watchdog, and it is not
a regulator. It has no powers whatever to enforce any of its recommendations on to the
Government, and the Government are not bound to accept any of those recommendations.
The administrative justice and tribunals system has undergone considerable changes over the
last few years, considerable structural reform, and we think it is now in a much better place
than it was when the AJTC was first set up. I would like to acknowledge that, in my opinion,
in its time the AJTC has done good work and important work, but I believe that we are in a
very different place today. The legal landscape has changed considerably and it is a landscape
that I have been able to watch develop, both as a practitioner for 23 years before I became
an MP in 2010, and more recently as a politician.
I do feel, and I know, as a Minister, that the vast majority of administrative cases are now
dealt with through the unified tribunal system, which, as you know, is administered by
HMCTS. That, of course, is overseen by the independent judiciary. For those tribunals,
ombudsmen and other bodies that are not yet in the unified tribunal system, we feel that
they will not be left behind, and that the Ministry of Justice is still very well placed to work
with those bodies and their sponsoring government departments, to ensure that users
benefit—this is very important to us, and I know it is important to this Committee—from
improved access, fairness, efficiency and justice.
So these are opening remarks that I would like to think give you an indication of how I am
viewing this as the responsible Minister. You raised a couple of specific points concerning
letters and information, and I would like to ask Angela to explain to the Committee the
situation there.

Angela van der Lem: Thank you, Minister. So one of your specific questions was about
whether the governance strand of the work programme that we published in December was
complete by the date in April which I think we had indicated in our strategy. I would make a
few points on this. In our work programme, we explained our clear commitment to
strengthen the MoJ's relationship with other government departments and indeed users, to ensure the fairness, accessibility and efficiency of the admin justice system. In publishing the work programme we wanted to demonstrate that we have a clear commitment to improving the system for users. We do care about the system.

Within that work programme, we did indeed have a strand that was about governance, and that was about the relationships that we have with a whole range of bodies with an interest in the administrative justice system. Part of those arrangements was about the devolved Administrations, and other arrangements were with other government departments. By April, our intention, subject to Parliament approving the order, was to have in place firm arrangements with these other bodies. I can confirm that we have draft protocols in principle agreed with the devolved Administrations, who we have had a series of conversations with in detail over a number of recent months, certainly. We have draft protocols on how we are going to work with them to ensure that the oversight of the system as a whole is maintained.

We also have close relationships with other government departments. This is not a new thing; we have had relationships with DWP and the Department for Education for a number of years. But in publishing the work programme we wanted to show our commitment to making sure that those arrangements are robust. I can confirm to the Committee that we have arrangements in place. What I would say, in terms of the April date, is that we did not want to prejudge the outcome of Parliament by publishing protocols with these other bodies until the will of Parliament has been determined on the abolition matter. So that is what I would say.

The Minister referred to the fact that although we now have a unified system, and the bulk of the administrative justice system sits within the independently-run HMCTS, there are tribunals and ombudsmen that sit outside that system. We still have relationships with these
bodies, and I can give the Committee some examples if that would be helpful, but I do not want to go on too long about this now. But we certainly have relationships. I mentioned the Department for Education; we have been in discussion with them about schools admissions and exclusions policy. There is going to be no change to that policy. If anything, with this approach to abolition, we would be strengthening the MoJ’s commitment to secure improvements to the system for users, which is something that the MoJ needs to do, regardless of whether there is an advisory body or not.

**Helen Grant MP**: Could I just ask Alison to say a word on the costs?

**Alison Wedge**: You mentioned that some of the costs were incorrect in the documentation that we submitted. It is true to say that we found it quite difficult to calculate the costs. This is largely because the running costs of the AJTC have reduced over the last little while, along with other of our arm’s-length bodies. They were running at £1.2 million per annum, but with various efficiency savings we have run that down to £700,000 per month.

**Helen Grant MP**: Per month?

**Alison Wedge**: Per annum, sorry. The date of closure has been moving to the right as we have been going through the parliamentary procedure, and the abolition has not taken place quite as quickly as we would have initially anticipated. I can tell you now that we have calculated gross savings over the remainder of this spending review of £1.4 million. We calculate that over the next 10 years that will be £5 million. We will incur some costs. They amount to £0.6 million, largely redundancy and some monies that we are making available to the devolved Administrations. So over this spending review, the net saving is £0.8 million.

**Q3 Lord Norton of Louth**: Really coming back to what you were saying, Minister, one of the points you made is that you are embarking on quite a substantial structural reform that is not yet quite complete. However much it is the court and tribunals service you have

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\(^1\) i.e. to the Department having relationships with other bodies.
already referred to, it is relatively new. One of the points we raised in our 32nd report was whether or not this move was actually premature, and we see that a number of other respondents have made that point. I think it is notable as well that Scotland and Wales are choosing to maintain an independent AJTC equivalent for that very reason. I am wondering what the motivation or justification is, from the Government’s point of view, for taking the action now rather than waiting until the reforms are embedded and you see the effect.

**Helen Grant MP:** I think we are a considerable way through our structural reforms. I think they are developing well. I would like Government to have a more hands-on approach to this now, so that we are developing and delivering our policy in a more unified way. HMCTS, as you know, is expected to run a very efficient and effective system to uphold the rule of law, which I know, Lord Norton, you know an awful lot about, and to provide access to justice for all. It does have robust governance systems, again, as I am sure you know, reporting to the Lord Chancellor and to the Lord Chief Justice, of course, as an executive agency with an independent, non-executive chair and two judicial representatives. As far as governance is concerned, and as far as organisation, efficiency and effectiveness, and proper operation for end users are concerned, I think we are in a pretty good place.

As far as the devolved Administrations are concerned, my feeling is that they are not quite as far ahead as we are with the reforms. These issues were raised through the consultation; we listened to the consultation and read the consultation document very carefully. We responded, in my opinion, to legitimate concerns, and that is why we have agreed to continue providing short-term funding for a non-statutory Committee to oversee the devolved tribunals in Scotland and Wales. We are putting £100,000 per year into Wales and £50,000 a year into Scotland until the end of 2015. I am quite satisfied and comfortable with where the overseeing and administration of the vast majority of administrative cases is going.
**Lord Norton of Louth:** You are arguing, essentially, that we are getting there. I am just wondering about the justification for the order in which you have done it. That was the point about it being premature. Why bring it in at the point that you did?

**Helen Grant MP:** I do not think I can say too much more than I have said so far. I do not know whether my colleagues can assist with regard to the exact timing. Maybe I will ask Angela to say a word.

**Angela van der Lem:** I will try to. In terms of the unified system, we are, as you know, introducing the property chamber to that system. We see that as the last major plank of the unified structure. That should take place this July, assuming that the process follows as we would expect it to now. It is very close to completion. With that creation of that unified system, yes, we may want to—well, we will—bring in new appeal rights to that system, and we may want to move some of the existing tribunals that still fall outside the system on a cost-benefit proportionate approach that we would take.

I think it comes back to this point of whether an advisory body is necessary to provide an oversight function. Our belief—the Government’s position—is that the MoJ, in order to make improvements to the system, needs to be more hands-on. For any actions to be taken, it would be the Ministry that would be doing so, rather than the AJTC. So I do not think we think it is premature to abolish a body that is providing useful advice—not unhelpful advice—but something that we need to get stuck into in any event. So I do not think we think it is premature, and in any case, we think that the bulk of the unified system will be in place this July.

**Helen Grant MP:** And if I could just add as well: it is not just about cost here. It is about improving a system that we believe in. It is about making it more accountable, cutting unnecessary waste, and, ultimately, which is very important, we have a duty to do what we can to save taxpayers’ money.
**Q4 Lord Bichard:** Minister, that may be all very well, but I thought we should be clear on why we are here today. This is the fourth occasion that this Committee has scrutinised this order. We do not normally scrutinise orders four times, and we do not do it because we just enjoy meeting together. We have done it because we have had significant difficulties in finding out what the cumulative savings were, and other colleagues will follow that up. We have had considerable difficulty in finding out the current status of the Administrative Justice Advisory Group. As I say, others will follow that up. I am still not quite clear what the situation is there. We had incorrect information given to us. We had an impact assessment that was reproduced, despite criticisms in the other place, an amended impact assessment was available only on 28 January, and we have had significant problems in getting a robust explanation as to how the public are going to continue to be protected. Others will follow those issues up, but that is not, I think, a catalogue of great success, which I think is why the Chairman at the beginning suggested that the whole handling of this fell below acceptable standards.

The particular point that I just wanted to pick up, however, because I am still not clear about it, is where we are with the tribunals that fall outside the tribunal service. Now, when we last looked at this—I am cautious in saying this—there were 21 tribunals that were in that position. I think we actually asked for a map to explain to us when they were going to be brought into the system or not, and if they were not in the system, what the position with those 21 tribunals was. I am still unclear. That may be a problem for me, but I am still unclear. So my question is, what is the position with these 21?

**Helen Grant MP:** I am going to try to answer your question. The vast majority of administrative cases come in, as you know, to the unified tribunal structure. I have explained, hopefully clearly, to Lord Norton, the oversight and the administrative benefits of that situation. More tribunals will go into the unified tribunals system in due course, but for those
that are falling outside, be it 21 or whatever it is, we are still quite satisfied that the Ministry of Justice is exactly the right body to control what happens, to strive for improved efficiency, effectiveness and accountability. I say that because of the plan that we have clearly set out within the work plan—which is a three-year plan—for how we are going to do this.

Maybe I could just simply explain, because it is not a complicated process. It involved very much improving our relationships and developing those relationships with the various government departments that have lead responsibility in those particular areas. We will then have regular meetings with those various government departments and anyone else who we may need to meet with, to gather evidence and to be able to establish how the system is working and whether it is doing the job we need it to do for our service users, which is key. For example, we are working with the Department of Education to assess whether the independent review panels are working effectively. Then, as a third tier of administrative oversight and accountability, we have developed this Administrative Justice Advisory Group, which you mentioned. This group meets twice a year. Its membership is very impressive. It includes the Citizens Advice bureaux, the Independent Complaints Reviewer, Advice UK, the Free Representation Unit, the National Parent Partnership Network, Mind, the Care Quality Commission, Coram Family, the Civil Mediation Council, the Ombudsman Association, Disability Rights UK and the Centre for Public Scrutiny. We can go to that group, whenever we like, actually, and they will gauge how administrative justice is working in these areas for users and will identify any concerns that they feel that we need to act upon.

All those things must be taken together, plus, of course, the desire to bring it effectively in-house, to get hold of this so that we have the development of policy being undertaken by those delivering it. Along with those three other structures, we think that that will work very effectively.
**Lord Bichard:** Minister, you have not answered my question. You know the tribunals that came within the purview of the AJTC—you know that. I want to know whether you know what is happening to each of those, and when it is going to happen, which is why we asked for a process map. What you are telling me is that there is a process in place and it is all going to be wonderful, but actually—I am not trying to put words in your worth—you are saying to me, “We don’t quite know yet”.

**Helen Grant MP:** No. With the greatest of respect, there is a good system that we are putting in place. I am quite satisfied it will work. I think it will be better than the system that we had before. I think we should perhaps be prepared to give it a chance and look at what is happening here. I would go back to what I said before: there could be even more accountability because, at the end of the day, the AJTC were simply a standing committee. They were an advisory group. They did not have teeth. They were not the watchdog. They could not tell Government off.

**Q5 Lord Bichard:** Before the Chairman moves me on—

**The Chairman:** I am not going to. I am waiting for the answer to your question.

**Lord Bichard:** You are really not in a position today to tell me which tribunals will come within the unified structure, which will not, how you are going to handle those that do not and when all this is going to happen.

**Helen Grant MP:** I think I have answered your question. With the greatest of respect, you might not agree or like what I am saying, but I do feel I have answered what will happen to those ombudsmen, bodies and other tribunals that do not go within the unified system—

**Lord Bichard:** But which are they, Minister? Which are they?

**Helen Grant MP:**—which is namely through further meetings, further consideration, improving relationships with government departments and using this advisory group.

**Lord Bichard:** But can you name which they are?
**Helen Grant MP:** Angela, could you assist in giving precise details of the 21? Is that what you are wanting?

**Lord Bichard:** The last figure we had was 21. It may have changed; I do not know.

**Helen Grant MP:** We will do our best. If it would be helpful, if we have not got all of them, then I am certainly very happy to write to you with a full list of the 21.

**Lord Bichard:** But you will accept, Minister, that this encapsulates why we are here for the fourth time? We keep asking the question. It is very difficult to get specific, clear, explicit answers.

**Helen Grant MP:** Angela?

**Angela van der Lem:** I have a full list in front of me, and I can name a number of them or give you examples of the tribunals that we have been working—

**Lord Bichard:** Can we have the whole list then? Not now, but can you give it to the Committee clerk?

**Angela van der Lem:** It would take some time to go through the whole list now.

**The Chairman:** Just as a matter of interest, since you have got it there, why have we not had it already?

**Angela van der Lem:** I think as part of the map exercise we did give an indication of the sort of tribunals on that list, so I shall just find the map that you were provided with and read some of the ones out of that. On schools, Office of the Schools Adjudicator, Schools Admission Appeals Panel; Police Appeals Tribunal, police pensions regulator appeals tribunal; Solicitors Disciplinary Tribunal—I am reading backwards; apologies. On the traffic side, there are a whole list of them: Parking and Traffic Appeals Service (Parking Adjudicators), Road User Charging Adjudicator Tribunal, Traffic Commissioners, penalty charge adjudicators. We have got the Copyright Tribunal, the Company Names Tribunal; all those were listed, I believe, in the map that we shared with you.
What I would say in terms of what we are doing about oversight, in addition to what the Minister has said, is that we will be and are reviewing the performance of these bodies by drawing on available performance data, annual reports, business and development plans, and parliamentary user and judicial feedback. Users of non-HMCTS services are completely free to raise concerns with Ministers and their own MPs, which are fed back to the MoJ. We will be looking at the performance of those bodies against our stated principles of fairness, accessibility and efficiency. But to give you a sense of what we are actually doing rather than give you rhetoric, if you look at the Competition Appeal Tribunal, we have been working with BIS in recent years to review the future of that tribunal and, more recently, with their officials on a cross-government review of regulatory appeals, in particular to look at sharing best practice on improving the efficiency of the process. If I take the Valuation Tribunal for England, we have already committed that that tribunal is going to come into the unified system. We are in talks with DCLG on this.

But actually, I can give you a further example in this area of something that we have already done. Just to paint you a picture, this is a tribunal that is currently administered by the Valuation Tribunal Service, which is an ALB of DCLG and outside the unified system. When we were considering the appeals going to this tribunal, we were concerned about the impact of council tax localisation on the ability of the judiciary sitting in the tribunal to deal with the cases involved, inasmuch as they lacked expertise in benefits and means-testing issues. So the MoJ and DCLG Ministers negotiated amendments to legislation to allow fee-paid First-tier Tribunal judges to sit in the Valuation Tribunal with the consent of the SPT. This was all with the aim of thinking about the users and whether the system was operating effectively in mind.

In this way, the MoJ had oversight over that system, and was able to proactively manage a risk of a policy. We were able to take action. I can give you some other examples, because I
know that you have concerns on this area in particular. In the last year, three tribunals have been abolished because they were not sitting or the original legislation became redundant. The aircraft and shipbuilding tribunal was abolished in March 2013, the Office of the Health Professions Adjudicators was abolished in July 2012, and the Foreign Compensation Commission was abolished in March 2013. I understand the first of those was defunct for 30 years.

**Lord Bichard:** But these came to us anyway. We know that. I am not suggesting that there is not a lot of activity. My contention, and I will close on this point, is that you ought to have been able before today to tell us exactly what was happening with each one of these tribunals—whether they were coming into the unified system and, if they were not, what system of oversight was going to be in place, and we have not been able to get that information. What you are telling us now is, “Lots of things have been going on and we are determined that that should happen”, but the fact is that it has not happened.

**Q6 Lord Scott of Foscote:** Minister, in your opening remarks to us, I think you described the AJTC as an advisory body. I wonder if that is not rather undervaluing it. Of course it is easy to agree that it has an advisory function, but its function is greater than that, surely. Its function is to act as, so to speak, a watchdog on behalf of the public for the way in which the administrative justice system—and tribunals in particular—is functioning. If it sees anything that it thinks needs attention to be drawn to it, it can draw attention to these things, and to the Ministry of Justice, which can then be expected to take steps to consider the points and remedy them. In the consultation responses that we received, a number placed great stress on the impartiality and independence of the AJTC from Government. Of course, it is a part of Government; it is appointed by Government; it is funded by Government; but that does not mean that it is not independent of Government, just as judges are funded by Government and appointed by Government. So too the council had a
degree of apparent independence which I think a number of those who responded in the consultation process regarded as important and valuable.

It seems to me that you are jettisoning that independence and impartiality in substituting for the council the new advisory group. Its name says what it is: it is an advisory group, and it does not have the same oversight function—the same watchdog function—that the council the existence of which is going to be terminated has had. That aspect of it has been valued by people who use the administrative justice system, which is after all part of the justice system for the country as a whole.

The 2011 Act, Section 8(2), which sets out the tests for exercising the power to terminate the existence of unnecessary quangos, says that the order must not remove “any necessary protection” or “prevent any person from continuing to exercise any right or freedom”. I was particularly concentrating on—I invite your comments on—the requirement that there must not be a removal of “any necessary protection”. Surely the council did provide a protection, and many of the users of the system would have regarded it as a necessary protection. I do not see how that will possibly be duplicated by the advisory group that is there to take its place. How do you deal with that requirement of the Act, which needs to be satisfied if your proposal is to go ahead?

**Helen Grant MP**: First of all, Lord Scott, I have no wish to be at all disrespectful about the tribunal—the body—that we are talking about today. I actually believe, of its time, that it did a good job and an important job. My point—I probably did not make it well enough—is that we are now in a very different place; things have moved on. The vast majority of administrative justice cases—not all—are now dealt with within this unified tribunal system, which of course is administered by HMCTS, which is an organisation and body that I have great belief in, in terms of the rule of law, access to justice, accountability, governance and oversight, for all the reasons that I have given and will not repeat. With regard to the
requirements in the Public Bodies Act and Section 8(2)—and Sections 8(1) and 10 for that matter, but I know you are directing your question to Section 8(2)—I am quite satisfied that there will be no loss of any of the necessary protections. In order to put some meat on the bone in relation to that statement, I would like to ask Alison to just elaborate a little bit more on that.

Alison Wedge: I think one of the things that I would like to say first of all is that, although there may have been a perception that the AJTC was a watchdog, it actually was not. It was a purely advisory body. It is an advisory non-departmental public body.

Q7 Lord Scott of Foscote: Are you speaking of what it became or what its statutory function was?

Alison Wedge: What its statutory basis is. It is an advisory NDPB.

Lord Scott of Foscote: That is what the statute limits? It has that limitation in its statutory constitution?

Alison Wedge: It is classified by the Cabinet Office as an advisory NDPB.

Lord Scott of Foscote: Well, I wonder what the statute under which it was set up had to say about the function that it was intended to serve.

Alison Wedge: It has a function to oversee and provide advice to the Government.

Lord Scott of Foscote: The oversight point was the important point.

Alison Wedge: We would contend that the AJTC is purely advisory.

Lord Scott of Foscote: But are you ignoring the oversight point? You have cited there, and I am grateful for it, the statutory intention that it would oversee and advise.

Helen Grant MP: But it has no power to enforce any of its recommendations. It can make recommendations and, of course, they are always listened to, but it has no power to enforce.
**Lord Scott of Foscote:** Certainly, but there are a number of organisations who have considerable powers in making recommendations and they are very valuable, and if they are made—and of course they are made—with a certain amount of publicity, that in itself puts pressure on Government, and it will be sometimes unwelcome pressure. One of the fears about this is that you are trying to get rid of a particular piece of unwelcome pressure, just as administrative justice as a whole is under some scrutiny. We read in the newspapers about the Government getting rather fidgety about the extent to which judicial review is increasing. Judicial review is part of administrative justice, and it is nearly always a great challenge to Government when the judicial review succeeds.

**Helen Grant MP:** Just on this, it is just a difference of opinion here. I am quite convinced that HMCTS is sufficiently independent to provide that oversight that you are talking about, and that we both agree is important. I think HMCTS can do a very good job in relation that, for the reasons that I have given.

**Lord Scott of Foscote:** Just remind me what those initials stand for.

**Helen Grant MP:** Her Majesty’s Courts and Tribunal Service.

**Lord Scott of Foscote:** That has the same oversight function, does it, that the statute vested in the council?

**Helen Grant MP:** Because of its robust governance and the fact that it is required to report to the Lord Chief Justice, the Lord Chancellor, the independent non-executive chair and the two judicial officers that sit on the board, yes, I think that would be quite sufficient.

Do you want to say a little bit more? Have we answered Lord Scott’s issue about 8(2)?

**Alison Wedge:** The only other thing that I would say is that we do not think the abolition of the AJTC will prevent any individual or tribunal exercising any of their rights or protections. There are a number of other routes, as the Minister has explained, and there will be a lot of
data and analysis that the MoJ will do to see whether those rights are being exercised to the appropriate standard.

Lord Scott of Foscote: And do you think there is nothing of substance in the fears that were expressed to us in the consultation process of a lack of independence and impartiality in the substitute that is being provided for the, as it will become, defunct council?

Alison Wedge: I would agree with the Minister that HMCTS provides that independent oversight, for the reasons that we have explained.

Q8 Lord Plant of Highfield: I have two questions, I think. First of all, when you wrote to us on 26 February, you said at that time, “It is fair to say that the” advisory “Group is not yet … operational”. What is its current status? It would be useful if you could be as precise as possible about when it became operational, or when it is going to become operational.

Helen Grant MP: There have been three meetings. I have given a list about the make-up at the moment of the group, which is working well. Angela, could you give some more information about the further details?

Angela van der Lem: Yes. I know the group first convened last May—May 2012—and there have indeed been three meetings on a sort of six-monthly basis, although in fact the group has met more frequently than that: when we were looking at our work programme to develop that, we had a workshop with the group. I know there has been a lot put on “There will only be two meetings a year”, but in fact what we expect to happen and what is happening is that there will be a lot of work underneath those two meetings. We are keen to have a flexible approach to this group. It is not meant to replicate how the AJTC currently operates in any way, other than its focus on user experiences of the system and—as the objectives set out, which I think you have all seen in previous information—to act as an expert forum for testing ideas and policy initiatives.
The group is operational, but obviously there is one aspect of the group that is not operational yet but would be, pending abolition, and that is in relation to the devolved Administrations. We have been talking to the devolveds, and they have some plans for what they would do post-abolition to set up non-statutory independent committees, and their reasons for those—as the Minister has already said—are because they are at a different stage of reform in their tribunal process than the rest of the UK and England is. So there is some case for them to have a temporary body of an AJTC nature. We do not think that is the case on a long-term basis, but that would be for them to decide. The one aspect of the advisory group that is pending abolition would be to entrench representation from the devolved Administrations. As I said earlier, we have an idea of who we think would be most likely to be representing the devolveds, but we do not want to pre-empt Parliament by doing that.

The group is up and running. I have mentioned flexibility. I have talked about work underneath. I shall give you a flavour of the sort of work this group will be doing. At our last meeting, which was on 7 May, we spoke about the strand of the admin justice strategy which is about maintaining a user focus and, in particular, a project that the MoJ wants to take forward which is about developing better guidance for users of the admin justice and tribunal system. So in particular this is not just about thinking what is available on the website to users, but also about how a tribunal works, and also about when they are making the decision whether to go to a tribunal or to go to an ombudsmen or another redress mechanism.

There is a lot of work to be done. We gathered some useful views from the AJAG—the Administrative Justice Advisory Group—members at that meeting about issues of importance and, actually, the whole gamut of membership were very interested in that issue.
But what we have decided to do is to convene a sub-group to focus in further on this issue.

We have asked for volunteers to come forward from the group and be part of that.

As I think the Minister may have said earlier, we do not want the membership to be fixed.

We will have a core of interested representatives, as we have, but as we move into certain issues—for example, the Mental Health Tribunal—we want to have that flexibility to invite and commission research on specific issues as and when we need to. We actually see merit in having a more flexible structure to the advice that the Government commissions on issues.

**Q9 Lord Bichard:** This may sound a trivial question, but do you pay these people an honorarium, or do you pay them expenses?

**Angela van der Lem:** I do not believe we pay them any expenses for this, no.

**Lord Bichard:** You do not pay them anything at all, so the fact that you are beginning to talk about something which is meeting almost as frequently as the body you have got rid of is not going to cost you more money. In other words, you have taken that into account, have you, with the net figures you gave us earlier?

**Angela van der Lem:** What I would say about the work that we are doing is that we will be doing some virtual work. As I mentioned with the work programme that we published, we actually electronically communicated with all the members of the group to get their views, so it is not a matter of always coming to meetings with the MoJ. We will convene meetings where they are useful, but just not on an AJTC-style monthly sort of basis. We want to be quite targeted about how we develop our policy.

**Q10 Lord Plant of Highfield:** You have more or less answered my second question, but I would like to raise at least one element of it that I do not think you have addressed. The second question was going to be about the effectiveness of the group if it was going to meet only twice a year but, as you say, it is going to meet—
**Helen Grant MP.** As often as it needs to

**Lord Plant of Highfield:** As often as it needs to. However, as you said, the group is quite large and represents a fairly diverse range of interests. Are the two formal meetings a year going to in any sense authorise the group to speak with one voice over a particular issue? I am not putting this very well. If you have all this informality and flexibility, how are you really going to know that the advice that is emanating from these ad hoc meetings, if I can call them that, is authoritative for the group as a whole? The existing group meets on a monthly basis and there is a kind of authority about its advice that arises from the fact that it has those formal meetings. This new group is going to be very informal. How authoritative is that informality of advice going to be?

**Helen Grant MP:** I know that Angela will want to say more because she has been directly connected with building this and creating it. I would not necessarily say that it is informal. I would re-endorse that there is flexibility to it in terms of who is on the group and how we develop as time goes on. The most important thing here is that we get it right and that we improve the system, not make it worse. We think that the group and the nature of the individuals and organisations who are on it speaks for itself, in many ways, in terms of its authority and how those individuals will conduct themselves in ensuring that concerns are raised.

**Angela van der Lem:** On the transparency side, we have said that we will make minutes of the meetings available for the public. On whether the group speaks with one voice, I have found it quite interesting—I refer to a recent discussion of the group about how we might improve guidance for users available electronically and by other means—that you get a diversity of views. Sometimes people coalesce around a certain issue, but there are sometimes diversities of view and that is not necessarily a bad thing. It is not necessarily the case that coming to a single approach for this group is definitely always going to be the right
thing. Actually, looking at it from a range of perspectives could be helpful, but perhaps that is something for us to think about.

Q11 Baroness Morris of Yardley: I want to ask a question about consultation. Before that, though, I want to go over a couple of small queries. I am not sure that clarity has been a watchword of the answers that we have received today, and I am still none the wiser on a lot of things. On the expenditure, if you are not paying anyone anything, there is an issue about that, to tell you the truth; it limits whose time you are likely to get, and I do not think it is good practice. Not paying people cuts out lots of people who are taking part in this exercise. I ask you to think again about that and perhaps reflect it in the finances. It might be of no cost to the people but it is a cost to your department. If you are doing online consultations or being ad hoc and flexible, if you are going to go back to once a month, that is a cost. It is not neutral because you are being mean and not paying anyone; it is a cost to your staff’s time. You need to be really clear in your answer to us because you have not been clear so far on the costs. We have had to come back to you and in the first instance you did not account for the extra costs that will fall on the department in the rearrangements as part of the overall costs. You might not want to answer that now, but be absolutely sure that your answer to Lord Bichard was right—that this flexibility, with all the extra meetings, exactly as you want them, costs not a penny more than the estimates that you have given us.

The second question follows up to that of Lord Plant. Who is in charge of this? What obviously strikes me is that you can commission research, have flexibility, work online, call monthly meetings and do this, that and the other. Never once in that did you say what they could do—whether they could commission research, call an extra meeting, say what the agenda should be or whether they could bring any questions back. You might now say that that happens, but the fact that words like that never came across in your answers to the
questions just made me think that it was your thing and not theirs—that you are in charge. The minute that that happens, it is not a body of as much worth. Those are two questions, of many, that you have not answered. On the consultation, Minister, you said that the AJTC—

**Helen Grant MP:** Can I just come back to you on those two questions? You are making very fair and reasonable points there. I want to be as clear as I possibly can with the Committee because I know that, if I am not, this could go on for some time. I want to do my best to give you the information that will allay fears or at least allow you to understand exactly where we are going and what we are doing. If I may, can I write to the Committee with that clarification on the expenditure in relation to what we are paying or not paying AJAG members in terms of their expenses? I will also, if I may, write to the Chairman on the issue of the ability of the members of the committee to present papers and ideas and to question and query.

**Baroness Morris of Yardley:** There was a second part to the expenditure question about ensuring that the flexibility that you like so much was properly costed in terms of your department’s time.

**Helen Grant MP:** I am very happy to write to the Chairman.

**Q12 Lord Bichard:** Just to add a supplementary to the supplementary, you must be able to say today whether or not the committee, the advisory group, is going to have the power to commission work and speak independently. This is a really important point because it goes to the heart of the issue that Lord Scott was raising as to whether this will be a pawn of the department or whether it will exercise some independent review, albeit in a different way from the way the previous group did. I completely agree with Baroness Morris; all your answers suggested that this was not much more than a pawn of the department.
Helen Grant MP: Now I am aware that you would like much more specific information on the advisory group. Obviously there are a lot of issues that we could have been talking about today, and I was not aware in advance which would be the issues that came up. Now that I know that this is something that you want more information, we will certainly—

Lord Bichard: Minister, I am sorry, these are questions that we have asked. This is not the first time that we have raised the issue of the advisory group.

Baroness Morris of Yardley: This is not a matter of detail.

The Chairman: They have been asked in the reports.

Helen Grant MP: Would you like to say anything?

Angela van der Lem: I will try. On the costs to the department, we can indeed come back to the Committee and confirm about the expenses. As I said, my understanding is that we are not paying them expenses but that might be something for us to think about. In terms of the costs to the department in MoJ time and effort on admin justice, and indeed the work of the group if the group is not paid for its time, I would say that in order to make any changes to the admin justice system for the better, that MoJ time would be needed regardless of whether or not the AJTC continues. It is wrong to say that actually all that is happening is that we are replacing AJTC work with MoJ work. Because the AJTC is unable to take action on its propositions, recommendations and advice to Government, you would need that MoJ resource anyway. However, we will certainly take away the point about expenses for the Committee.

The Chairman: Could you specify what you were surprised to hear us asking today?

Angela van der Lem: I do not think I have been surprised. Perhaps on the expenses.

The Chairman: The Minister said that she would very kindly write to us about certain things, but all these things have already been raised.
Angela van der Lem: On the expenses side of the Administrative Justice Advisory Group, we were not expecting—

Q13 Baroness Morris of Yardley: Okay, let us move on to the other bit. On my other question, which is probably more important in the long term, it is not a matter of detail as to who controls the agenda. It is a matter of fundamental principle. Minister, I really cannot believe that you do not know that off the top of your head.

Helen Grant MP: Which issue are you talking about?

Baroness Morris of Yardley: I have just been really clear.

Helen Grant MP: The MoJ is chair. There is a group of—

Baroness Morris of Yardley: Who controls the agenda? Who has the power to commission things, to ask for work to be done and for papers to be produced and to put an item on the agenda? That is fundamental to the nature of the body; it is not a matter of detail.

Angela van der Lem: I apologise if my answers earlier suggested that we see it as a one-way street with the MoJ directing the agenda. We do not. In fact, at our latest meeting—as I have said, the minutes of these meetings will be available—we discussed, in addition to the website issue, the issue of non-HMCTS tribunals and our oversight approach to those bodies and to new appeal rights coming into the system. We expressly invited the committee members to raise proactively with us areas of concern that they have on any issues in relation to tribunals sitting outside as a standing agenda item.

Baroness Morris of Yardley: That is not the answer to the question.

Angela van der Lem: Okay.

Baroness Morris of Yardley: Look, in words of one syllable: you have put that on the agenda and said it would be discussed. Then you very kindly say, “If you’ve got anything on
this item to raise with us, please do so”. I am not talking about that. I am talking about what happens, if I am a member, if I want this on the agenda.

_Helen Grant MP_: As the Minister, I say before this Committee that it is a two-way agenda. If any member of this group says, “I would really like to put this forward for the group to consider at the next meeting”, I do not believe that there would be any problem whatever in accommodating that.

_Baroness Morris of Yardley_: Can they commission research? Can they ask for a paper?

_Helen Grant MP_: If I may, Baroness Morris, I want to be absolutely clear with you. If it is acceptable, I would like to write to you with those details.

_Q14 Baroness Morris of Yardley_: Okay, I want to move on to the consultation. On the AJTC, Minister, I quite see what you are saying. It was not broken or a disaster; it had done a good job, but you felt that there was a better way of doing it. When you set off on this journey, you did not think, “I don’t want anything to do with that; it’s been an utter disaster”. Given that, why did you not discuss your plans with the AJTC before making a decision?

_Helen Grant MP_: The proposals for public body reform across Government were announced in October 2010. There were courtesy calls, of course, to the chairmen of the appropriate bodies that might be affected by the legislation. After that, there were a number of conversations and, I believe, meetings between the chairmen of this particular body on this particular matter. That dialogue has been ongoing since October 2010. Then, as you know, there was a full public consultation, which started in July 2011 and lasted for 12 weeks. This body has not been treated differently from any other body. They were aware of what was going to happen, albeit not that long before. Again, this was not a prejudging situation. We simply said, “This is what we are going to be looking at. There will be a consultation and you will be able to get involved.”
Baroness Morris of Yardley: Might it not have been better, therefore, as this has taken a long time—it has not had an easy passage through Parliament—to seek the view of the body that was being replaced before making the decision? I end up wondering whether, once you had made the announcement, there was ever a chance that you would change your mind.

Helen Grant MP: If I may say so, I think that you have just made a mistake. You said that we had made the decision. We had not made the decision. We had decided—

Baroness Morris of Yardley: You had put forward the proposals.

Helen Grant MP: We had decided to look at this. We then said that there would be a 12-week consultation, in which we would look, listen and consider. If we had to make changes or completely change our mind, then there we are, but we did not feel that we wanted to change our mind. We took on board legitimate points that were raised, particularly in relation to the devolved Administrations. This is where we are today.

Baroness Morris of Yardley: Let me pick up the comments of the Lord Chairman and Lord Bichard, as I have yet to hear you say whether you think that this process has been handled well. Both my colleagues on the Committee have put it to you that, to be honest, this is a really poor example of trying to get secondary legislation through Parliament. When my colleagues have put that to you, you have not said whether you agree. I would like to hear whether you think that we are wrong and that this has been perfectly okay, or whether you think that it has fallen below the standards that you would expect from the Government of which you are a member.

Helen Grant MP: I think that it has been handled effectively, properly, openly and honestly. I do not believe that there has been—

Baroness Morris of Yardley: Efficiently?

Helen Grant MP: Yes. Obviously, there are always ways to do things better. I have not been a government Minister for too long but, in the six months that I have, I have found that
you can always do things better. Having looked at the papers and worked with officials, I am quite satisfied that this has proceeded in a reasonably good manner. It is never easy to make changes such as this, but I can also understand why there is concern and why there has been so much scrutiny. I think that that is what this place is for and what the other place is for. As I said when I came before this Committee, I am glad to have the opportunity to come here today to try to give further clarification. Where I have not given clarification, I will write to the Lord Chairman with further remarks.

**Baroness Morris of Yardley:** I think that you just need to remember that we have very few Ministers before the Committee and, as Lord Bichard said, we do not do it to entertain ourselves. I have to beg to differ with you on your view of the efficiency of how this has been dealt with. I do not think that it has been good.

**Helen Grant MP:** Noted.

**Q15 Baroness Hamwee:** Minister, this is intended as a sweep-up question but, just as I approach the sweep-up, let me add to the questions that have been at the heart of the opposition, which are about the finances and the independence. On the finances, can we have an assurance—maybe not now—that, as well as there being no additional cost to the MoJ, there will be no additional cost to HMCTS? With regard to independence, are you able to say now that the group will be able to meet without the presence of anyone from the MoJ? The second part of that question is whether, if anyone from the group requests that an item should go on the agenda, you will categorically say that it will go on. I do not know whether you can answer those.

**Helen Grant MP:** I am very happy in my letter to the Lord Chairman to pick up both those points: clarification on costs and clarification on the two points that you have made on what the group can and cannot do.

**Lord Bichard:** I am sorry, but can you tell us today what your answer is? Are you able—
**Helen Grant MP:** No, Lord Bichard.

**Lord Bichard:** So you are not able to say today whether you are prepared to give the members of that advisory group the right to raise an issue.

**Helen Grant MP:** I would like Angela to try to help you further, if she can.

**Angela van der Lem:** On the right to raise an issue, absolutely. If I go back to the group’s objectives, they are to share user experiences of the system and to share best practice across admin justice, so we would expect the members of the group to raise issues and certainly to propose items for the agenda.

**Lord Bichard:** So the department will never veto an item from the agenda.

**Angela van der Lem:** No, I cannot see us wanting to do that.

**Lord Bichard:** That is helpful, because that is what I was hoping we might hear. You will never veto and, if the group asked to meet on its own, you would accept that, too.

**Helen Grant MP:** I think that I would like to write to you on that point and to take advice on it. I do not want to guess.

**Lord Bichard:** So you are not quite so sure about that one.

**Helen Grant MP:** I would like to make the decision myself, if I may.

**Angela van der Lem:** I cannot see how we could veto the decision of the group of people involved to meet together. I do not know quite why they would want to but, if they did, I do not think that we could prevent them as individuals from deciding to come together.

**Lord Scott of Foscote:** Where would their meetings take place?

**Angela van der Lem:** The meetings currently take place at the MoJ but, as I say, they are all members of independent bodies and would be free to come together as they wanted to. We would not have a veto over that.

**Q16 Baroness Hamwee:** The question that I was going to ask apart from those was whether there was anything that you would like to add, or do you feel that this is enough?
**Helen Grant MP**: I hope that we have assisted a little further today. Where more information has been requested, I will do my best, with my officials, to write to you. If you still feel that the questions are not being clearly answered, please write to me again and I will try again.

**The Chairman**: Minister, on behalf of the Committee I thank you and your officials for joining us today. This is, as has been said, the fourth occasion that this Committee has scrutinised this order, which I am advised is without precedent. It is extremely good of you to undertake to write to us with the information that we had previously requested but which you have not given us today. We will of course take that into account in deciding how to proceed before reporting to the other House. If this requires an unprecedented fifth scrutiny, that is what is going to have to happen. Thank you very much indeed.