

House of Commons
Public Administration Select Committee

Oversight of Administrative Justice

Written Evidence

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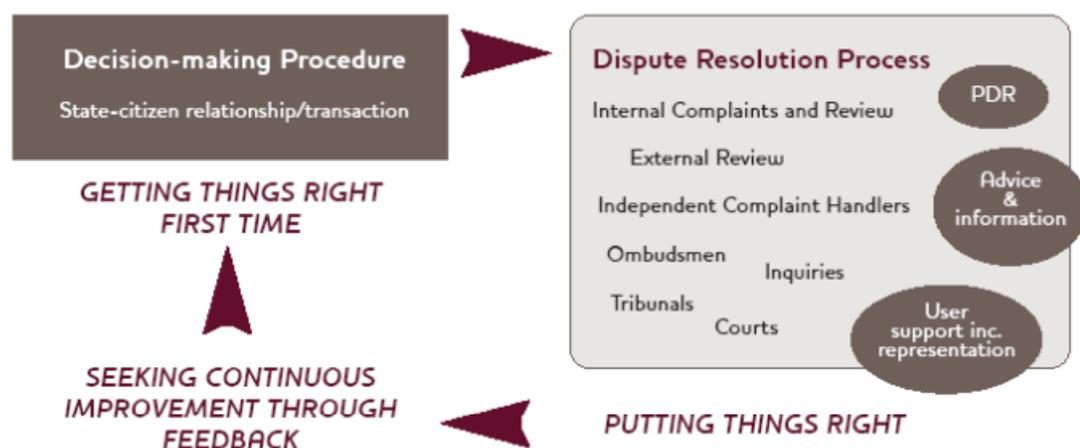
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Written evidence submitted by the Administrative Justice and Tribunals Council (OAJ 01)

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

The administrative justice system

2. The administrative justice system, as defined by the Tribunals, Courts and Enforcement Act 2007, is crucial to how the state treats its citizens, especially where there have been mistakes, misunderstandings or unacceptable standards of service. This includes decisions made by central and local public bodies about individuals, plus the arrangements available for questioning, challenging and/or seeking to change the decision of a public body. Such arrangements include:
 - complaint schemes;
 - ombudsmen;
 - tribunals – both within and outside the unified tribunals structure administered by HMCTS; and
 - the administrative court.
3. As part of its early work, the AJTC produced this model to illustrate the links between the various elements and stages of the administrative justice system:



4. The range of subject matter encompassed by administrative justice includes social security and child support, war pensions, immigration and asylum, mental health, tax, criminal injuries, special educational needs and disability, school admissions and exclusions, care standards and parking. For the vast majority of citizens, this is their principal engagement with government and democratic processes and the issues are of

great (often life-changing) importance to their family welfare, their livelihoods and sometimes even their liberty. It is surprising that the system does not receive the same recognition or priority as other aspects of public policy or justice, and often appears to suffer from a lack of understanding and strategic direction. Despite much rhetoric about the need to improve public services, to focus more on users, to concentrate on fairness and to uphold the rule of law, administrative justice continues to have “Cinderella” status.

5. The scale of the system makes its low priority even more surprising. There were around 650,000 formal tribunal appeal hearings in 2010, compared to 223,000 criminal justice hearings and 63,000 civil justice hearings (excluding family hearings). In addition, the Parliamentary and Health Service Ombudsman received 23,422 complaints in 2009-2010 (although not all of these proceeded to an investigation) and the Local Government Ombudsman received 21,840 complaints during the same period. But these appeals and complaints represent only the tip of the iceberg that is the administrative justice system. Government departments and agencies make tens of millions of decisions affecting citizens every year. The costs associated with original decision-making processes within government cannot be readily quantified as the data is not available. The cost of the tribunals administered by the Ministry of Justice (MoJ) in 2010-11 was £336 million.
6. The concept of an administrative justice ‘system’ is taking time to be universally recognised. It implies a strategic, cross-cutting view of decision-making and redress mechanisms across government, making it possible for general principles to be stated, good practice to be shared, and comparisons to be drawn between alternative approaches. The concept challenges the historical silo-based approach that often appears to define the public sector in the UK. Tribunals have little control over the demand which flows to them from departments and agencies. The latter have few financial or other incentives to learn from complaint or appeal outcomes or to reduce demand by doing more to get it “right first time”. At the policy level, the Cabinet Office has the lead on ombudsman policy, while the MoJ has responsibility for most (but not all) tribunals. The MoJ also has nominal responsibility for the administrative justice system as a whole, but has little influence over the rest of central government and no influence over local or devolved governments. In practice, collaboration between decision-making departments and the MoJ, to understand and improve the end-to-end experience of the citizen when disputes occur, is in its infancy. And there is a complex mix of devolved and non-devolved tribunals in Scotland and Wales, with confused responsibilities, a lack of clarity about strategic direction and no-one (apart from AJTC) with UK oversight of the system as a whole.

Administrative Justice at Risk?

7. Despite the challenges, the AJTC considers that the administrative justice system has made laudable progress in recent years. This is largely attributable to the reforms which followed the Leggatt Report of 2001, in particular in the area of tribunal reform.

However, there remains a long way to go before the system can be said to meet the needs of individuals and the public purse.

8. The AJTC recognises that the UK currently faces a period of austerity and that the government is reducing public spending in real terms. This makes it especially important to save money by reducing the need for costly appeals and complaints. It is equally important that decisions taken to achieve cost savings in the area of administrative justice actually achieve this goal, while avoiding unintended and deleterious effects on individual rights and legitimate expectations. For example, cuts in legal aid and the provision of advice services are likely to reduce access to justice for individuals, result in fewer unmeritorious cases being weeded out and prolong cases which do proceed. Unresolved disputes may also generate greater costs both for individuals and families and ultimately for government and the taxpayer. This is especially important in times of economic and social uncertainty when it is vital to have acceptable arrangements for the redress of grievances.
9. The AJTC's most recent report, **Securing Fairness and Redress: Administrative Justice at Risk? (Annex A)** highlights both the current problems and ongoing risks, explaining the need for longer-term reform. The report challenges the government and Parliament to recognise the scale of poor decision-making, and therefore unnecessary cost, generated as a consequence of complex and poorly drafted laws in some areas of administrative justice. It explores the effects of recurrent poor decision-making and highlights the importance of access to advice and guidance in seeking redress against an administrative decision. It concludes with a series of suggestions for wider strategic reform.

“Accessible, fair and efficient” – the focus of the AJTC

10. The AJTC was created under the Tribunals, Courts and Enforcement Act 2007 as the successor body to the Council on Tribunals. Schedule 7 of the Act charges the AJTC with *‘keeping the overall system under review’* and gives it responsibility for considering ways to make the system more accessible, fair and efficient. The focus is very much on individuals as users of public services and redress mechanisms.
11. The creation of the AJTC formed part of the same package of reforms that saw the introduction of a unified structure for central government tribunals and the creation of the Tribunals Service as a distinct executive agency to administer them. The Tribunals Service has subsequently been subsumed into HM Courts and Tribunals Service. It was recognised that over time these new structures would make a number of the functions of the Council of Tribunals, which had overseen tribunals for 50 years, redundant. However, the creation of an AJTC with a much wider remit, working alongside the new structures, was seen as a key part of the new arrangements.
12. The AJTC comprises 10-15 members, selected for their expertise from across the administrative justice system. The Parliamentary and Health Services Ombudsman is

an *ex officio* member. The AJTC also has statutory Scottish and Welsh Committees. The Scottish Committee is made up of 3-4 members, and the Welsh Committee of 2-3 members. These Committees meet separately, and are represented at AJTC meetings by their respective Chairs. The annual running cost of the AJTC and its Committees is approximately £1million. The Annual Report for 2010-11 is due to be published on 14 November (see **Annex B**).

Work of the AJTC

13. The AJTC played a significant part in the recent reform and transformation of the tribunals system. Its contribution included participation by its former Chairman, Lord Newton of Braintree, in key committees devising and implementing reforms; hosting a series of conferences and consultative events for the administrative justice sector in support of the reform process; and through its Guide to Drafting Tribunal Rules and participation in the Tribunal Procedure Committee, playing a significant role in work to simplify and streamline tribunal procedural rules. AJTC members have a statutory right to attend tribunal hearings and are assiduous in feeding their observations back into the system.
14. The AJTC has subsequently focused on its wider remit. In addition to its most recent report 'Securing Fairness and Redress: Administrative Justice at Risk?', AJTC publications have included:
 - ***The Developing Administrative Justice Landscape, September 2009 (Annex C)*** –
A preliminary examination of the constituent elements of the administrative justice system, exploring the links between these elements;
 - ***Principles for Administrative Justice, November 2010 (Annex D)*** –
A set of seven Principles intended provide a coherent framework for both decision-makers and redress bodies, and to demonstrate the standards which the AJTC uses to evaluate the system and its component parts;
 - ***Time for Action, February 2011 (Annex E)*** –
An investigation into the length of time it takes the Department for Work and Pensions' agencies to reach a final decision on benefit claims, calling for the introduction of a 42 day time limit for decision-makers to respond to appeals in order to achieve greater fairness between the parties to an appeal;
 - ***Patients' Experiences of the First-tier Tribunal (Mental Health), May 2011 (Annex F)*** –
A joint report undertaken with the Care Quality Commission, looking (for the first time ever) at the actual experiences of patients who applied to and appeared before the Mental Health Tribunal;

- ***Right First Time, June 2011(Annex G)*** –
An assessment of the quality of decision-making by public bodies, highlighting the low level of engagement in appeals and lack of feedback or learning. Drawing on examples of good practice, the report suggests practical steps to be taken by public bodies and calls for concerted action across central and local government. It also highlights the lack of data about the costs of poor-decision making, the need for new funding models and the potential savings of a ‘right first time’ approach.
15. The AJTC has also engaged with the government on significant proposals that have an impact on administrative justice. Over the past twelve months, these issues have included:
- Legal aid reforms;
 - Fees for immigration and asylum appeals;
 - Welfare Reform Bill, and in particular proposals for a new statutory reconsideration process;
 - Education Bill, and proposals for new Independent Review Panels to hear exclusion appeals;
 - Special Educational Needs Green Paper.
16. The AJTC also seeks to work with stakeholders in the administrative justice system. As part of this, the AJTC Chairman acts as an independent Chair for the Mental Health Stakeholders Advisory Group and the War Pensions and Armed Forces Compensation Appeals Stakeholder Group.

Proposed abolition of the AJTC

17. The AJTC is a listed body in Schedule 1 to the Public Bodies Bill, which is expected to receive Royal Assent later this year. The MoJ recently consulted on the proposed abolition and the outcome of this process is anticipated before the end of the year. The government appears to accept that the functions assigned to the AJTC are valuable but argues that these are functions already being performed by MoJ and HM Courts and Tribunals Service, rendering the AJTC unnecessary.
18. In its response to the consultation on abolition, the AJTC (**Annex H**) has argued that:
- despite the importance of administrative justice to citizens and the major challenges it presently faces, the issue is not given any real priority within government, whether in Business Plans or otherwise;
 - the work of the AJTC is complementary to the governance arrangements in HMCTS and is not a duplication;
 - ***independent*** advice cannot (as claimed) be replicated within a government department, especially when the subject matter concerns disputes between the citizen and government;

- inadequate account is taken of the wider UK dimension; and, that the savings from AJTC abolition are overstated.

Four key issues for administrative justice

19. The AJTC considers that the leading key issue for administrative justice is how to embed a '*Right First Time*' culture across the public sector. The benefits of learning from mistakes and complaints have long been embraced by most of the private sector, but the culture of the public sector largely remains one of denial and/or defensiveness. The benefits of improved decision-making for users, for taxpayers and for decision-making bodies themselves clearly merit greater attention, especially at a time of financial austerity.
20. At the same time, the AJTC is deeply concerned about the increasing trend towards the introduction of fees for those wishing to appeal against governmental decisions. This is the wrong way to manage demand levels. It is especially ironic that fees are being introduced for individuals while departments generally do not contribute to the cost of tribunals by reference to actual caseload volume or outcomes. If departments had to pay for each mistake they make, that would be the quickest route to "Right First Time".
21. In view of the likely cuts to legal aid and advisory services, the AJTC also considers it imperative to understand the consequences of reduced advice, guidance and representation on user behaviour and the functioning of tribunals. In particular, it will be important to monitor the number of unrepresented and (increasingly) unadvised people appearing before tribunals, and to assess the impact of this on the fair and efficient delivery of administrative justice. To do justice, and keep costs down, tribunal judiciary and administrators will have to adapt current practices and approaches in order to accommodate the emerging needs and interests of such users.
22. On a number of occasions, the government has made clear its wish to develop new and proportionate dispute resolution models – not necessarily involving a traditional appeal hearing. The AJTC has been at the forefront of those supporting the development of proportionate and appropriate dispute resolution approaches, and is due shortly to publish a report on this subject. It believes that there already exists much good practice that could and should be built upon. In addition, it takes the view that any new approaches should be rigorously piloted and assessed prior to wider introduction.

Conclusion

23. The AJTC is committed to efficient and better decision-making and justice. We do not understand why the government wishes to abolish the AJTC, which at comparatively low cost, can contribute a great deal of expertise and experience while also bringing both government and the justice system closer to the needs of their

users. The AJTC hopes that the Committee's inquiry will shed light on various unanswered questions, such as:

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

Annex A: Securing Fairness and Redress: Administrative Justice at Risk?
[http://www.justice.gov.uk/ajtc/docs/AJTC_at_risk_\(10.11\)_web.pdf](http://www.justice.gov.uk/ajtc/docs/AJTC_at_risk_(10.11)_web.pdf)

Annex B: AJTC Annual Report 2010-2011
<http://www.justice.gov.uk/ajtc/docs/AJTC-AR-2010-11-WEB-071111.pdf>

Annex C: The Developing Administrative Justice Landscape
http://www.justice.gov.uk/ajtc/docs/landscape_paper.pdf

Annex D: Principles for Administrative Justice
http://www.justice.gov.uk/ajtc/docs/principles_web.pdf

Annex E: Time for Action
http://www.justice.gov.uk/ajtc/docs/Time_Limits_final.pdf

Annex F: Patients' Experiences of the First-tier Tribunal (Mental Health)
http://www.justice.gov.uk/ajtc/docs/AJTC_CQC_First_tier_Tribunal_report_FINAL.pdf

Annex G: Right First Time
[http://www.justice.gov.uk/ajtc/docs/AJTC_Right_first_time_web\(7\).pdf](http://www.justice.gov.uk/ajtc/docs/AJTC_Right_first_time_web(7).pdf)

Annex H: AJTC response to Ministry of Justice consultation – 'Public Bodies Bill: reforming the public bodies of the MoJ'
http://www.justice.gov.uk/ajtc/docs/AJTC_abolition_-_response_to_consultation_final_web.pdf

November 2011

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

Summary

- Importance of viewing administrative justice from the user's perspective,
 - Which demonstrates the need for an integrated approach to administrative justice
 - And the need for independence
1. I wish to add briefly to the points made in the AJTC's submission to the Committee. I do this as an advocate of an integrated approach to administrative justice who urged Sir Andrew Leggatt in his *Review of Tribunals* to extend his consideration beyond tribunals to the whole field of administrative justice.
 2. Sir Andrew did recommend that the Council on Tribunals should have its remit extended and this happened with the creation of the AJTC following the passage of the Tribunals, Courts and Enforcement Act 2007.
 3. In my teaching and research on administrative justice I was struck by the complexity which faced individuals who had a grievance with a public body. There was a variety of routes to redress complaints about service and maladministration to complaints procedures and then the possibility of an Ombudsman, and challenges about rights with appeals to tribunals or reference to inquiries or a possible court action.
 4. These arrangements had gaps and overlaps with some redress routes leading to certain remedies which may or may not be the person's desired outcome even if successful.
 5. If one looked at these arrangements as components in a system and particularly from the user's perspective then it would assist analysis and comprehension and the identification of topics for reform.
 6. The 2007 Act introduces and defines the administrative justice system but this is more of an aspiration than a description of reality, as the various parts were not designed from a holistic approach but rather a piece-meal incremental approach.
 7. The integrated approach to overview means that scrutiny is given to matters within and across boundaries. The boundaries occur:
 - Within methods of redress
 - Within methods of improving administration/initial decision-making
 - Between redress and improving administration/initial decision-making
 - Within devolved jurisdictions and relations with UK/GB/England& Wales

- Between public and private sectors.
8. The point about relations between the public and private sectors is that Public Services Ombudsmen are being given responsibilities in the private sector, e.g. the English Local Government Ombudsmen in the field of privately funded social care for adults. Delivery of public services is also conducted by private bodies and the courts in exercising judicial review consider the actions of public and private bodies carrying out public functions. Thus the oversight needs to include this within its remit.
 9. One of the activities which the AJTC has carried over from the Council On Tribunal is visiting tribunals. These statutory visits allow AJTC members to observe not only the public hearing but also the deliberations of a tribunal in private.
 10. This allows the AJTC to fulfil its role of considering the composition and working of tribunals as part of the overview of the administrative justice system and provides useful feedback to the Senior President of Tribunals on the user's experience.
 11. Currently the AJTC is visiting some tribunals where the venue is a criminal court in order to assess the appropriateness of such courts for tribunal hearings. Tribunals are meant to be more accessible than courts and it is off-putting for some tribunal users when they learn that the tribunal is to be held in a criminal court.
 12. The AJTC with the range of experience in its Members allied to the observation from the user's perspective can provide a useful independent opinion and it is perhaps this which led Parliament's Joint Committee on Human Rights in its 7th Report: *Legislative Scrutiny: Public Bodies Bill* (HL86/HC725 of 2010-11) at paras. 1. 28-.29

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

- 1.28 Each of these bodies plays a particular function in ensuring the effectiveness of the domestic judicial system.. .
 - 1.29 ...The AJTC acts to ensure effective justice in the Tribunals system and the LSC to ensure fair access to legal aid. Functional and perceived independence of both of these bodies enhances the protection of the right to fair and equal access to justice, guaranteed in both the common law and international human rights law standards (e.g. Article 6 ECHR and Article 26 ICCPR).
13. The Ministry of Justice's consultation paper did not address the Joint Committee's view. The Ministry may disagree with it but in applying the test used in the *Review of Arms Length Bodies*, no reasons were given to support the Ministry's view that the AJTC did not meet the requirement of independence unlike the Civil Justice and Family Justice Councils.

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

November 2011

Written evidence submitted by Dr Richard Kirkham (OAJ 03)

Introduction

My interest in the work of the Administrative Justice and Tribunals Council (AJTC) stems from my academic research into one of the dispute resolution mechanisms at the heart of the administrative justice system, the ombudsman. I have attached below an extract from an article that I wrote a year ago which explains in more detail my position. In short, I strongly oppose the abolition of the AJTC. Here I summarise my thoughts.

Context

Administrative justice is an important aspect of the rule of law. Its importance stems from the size of the administrative state and the degree of direct impact it has on individual lives, both collectively and individually. Broadly conceived, at an individual level the administrative justice system includes the promotion of our interests in relation to health services, education systems, welfare benefits and a whole array of public services that affect our daily lives. During their lives most people will directly experience the administrative justice system more often and in the majority of cases more deeply than other branches of the law, such as the criminal justice system, the family justice system or the civil justice system.

In more than one country the importance of an individual's right to administrative justice is recognised by an express reference within the constitution (eg Art.33(1) Constitution of the Republic of South Africa).¹ By contrast, in the UK the significance of administrative justice has not always been given the prominence that it might. For instance, unlike in the USA where the courts are given an express authority to test administration against high procedural standards (the Administrative Procedure Act 1946), there is no statute that addresses the issue in general. Instead, in the UK we have a series of ad hoc measures that provide various unconnected elements of control and redress with the linked aim of providing for administrative justice. In addition, the courts have developed a body of administrative law.

The end result of past innovations in the UK on administrative justice is a highly complex and possibly overlapping system of administrative justice. It may be that the administrative justice system that we have ended up with is operationally perfect and designed in an admirable fashion. It may be that viewed from the perspective of the individual citizen, they have access to appropriate opportunities to pursue their grievances against public administration and suitable information about those opportunities. It may also be that viewed from the top downwards the system is organised in a rational, effective and cost-effective manner. The danger is, however, that none of these claims are true and that in fact the system is not fit for purpose. More than one observer of the system has subjected it to significant critique in recent years.² The difficulty is that our constitutional mechanisms for ensuring that the administrative justice system is effective and effectively managed are not strong, and

¹ See also the European Charter on Fundamental Rights, Art.41.

² Eg see the report of the National Audit Office in 2005 of certain aspects of the administrative justice system, National Audit Office (2005) *Citizen Redress: What citizens can do if things go wrong with public services*, (HC 21 2004-05). London: TSO.

will become even weaker should the Coalition Government go through with its plans to abolish the AJTC.

The role of the AJTC

The history of the political management of the administrative justice system has been dominated by ad hoc reform and subject or institution specific review (this is a non-party political point as governments of all persuasions have overseen the administrative justice system this way). Much of this work has been commendable but the fear is that opportunities have been missed to understand and rationalise the system as a whole. The real danger is that if the administrative justice system were considered in a holistic fashion then alarming gaps and unnecessary duplications in justice provision would be discovered. The ease with which users of public service can use and navigate the system is also a matter of concern.

At present it is unclear who is responsible for strategic oversight of the administrative justice system. The Ministry of Justice is the most obvious government department, but aspects of the system come under the responsibility of other departments (eg as with the ombudsman community). Currently, there is no clear or convincing direction being provided by the Government that the issue of overall oversight of the system is central to their future plans. This is worrying as it will probably mean that the administrative justice system as a whole will not be managed and that instead the various institutions within the system will continue to operate in an isolated and uncoordinated fashion.

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

Arguments for the abolition of the AJTC

It has been argued that the AJTC should be abolished to allow for the Government to take control of the administrative justice system. The difficulty here is that history suggests that governments only sporadically take administrative justice seriously, do not possess the appropriate knowledge base to undertake this function and do not always recognise their interests in taking this matter seriously. Governments also by definition lack independence. The Government's current lack of clear plan for the post-AJTC years suggests that the earlier

disinterested and sporadic approach to oversight of the administrative justice system is the more likely pattern of future oversight. Thus the abolition of the AJTC could well lead to administrative justice issues not being addressed adequately, which in turn could lead to flaws in the system become increasingly evident.

A further unspoken argument against proper oversight of the administrative justice system is that the output of oversight might lead to added expense for government. Thus it may be that there is a latent fear that citizens will be able to make more onerous demands on public authority or access enhanced financial remedies. Such a fear is expressed in several government contributions to consultations on administrative justice (eg recent responses to the Law Commission's proposals on administrative redress). But reforms to administrative justice systems do not necessarily mean that greater expense will be the end result. In Scotland recently a wide ranging review of the regulatory system was conducted which included coverage of elements of the administrative justice system. In this review, one of the key themes pursued was a rationalisation of the system.³

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

Conclusion

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

November 2011

³ Eg see the Crerar Review. (2007) *Report of the Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland*. Scottish Government: Edinburgh.

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

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

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

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

Introduction

1. As the Committee will probably be aware, the UK Parliamentary Ombudsman is an ex officio member of the AJTC, and a member of both its Scottish and Welsh Committees.
2. I have been the UK Parliamentary Ombudsman since November 2002. In that capacity I have served as an ex officio member of the Council on Tribunals, and its Scottish Committee; and its successor, the Administrative Justice and Tribunals Council, and both its Scottish and Welsh Committees.
3. I was also heavily involved, as a member of the Executive Committee of the British and Irish Ombudsman Association (BIOA), in the extensive contribution BIOA made to the 2004 White Paper, *Transforming Public Services: Complaints, Redress and Tribunals*, which led to the establishment of the AJTC. I spoke at its launch in 2007.
4. I would also add that from 1997 to 2002 I was Legal Services Ombudsman for England and Wales – an associated office of the Ministry, in its former guise as the Lord Chancellor's Department – which brought me into extensive contact with Ministry of Justice officials.
5. I therefore have a uniquely UK-wide, long-standing and broad perspective.
6. I am both bewildered and dismayed by the proposed abolition of the AJTC. I am bewildered because administrative justice is so important to the relationship between citizen and state. The outcomes of decision-making by a wide range of public bodies on a daily basis affect family incomes, jobs, healthcare, housing, education and much, much more. Citizens are just as likely, if not more likely to come across administrative justice issues in their ordinary lives than civil, or even family justice issues. In the circumstances I find it inexplicable that the Ministry is proposing to abolish the AJTC whilst retaining the Civil Justice Council and the Family Justice Council.

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

Abolition of the AJTC

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

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

10. I am still of that view and therefore consider the proposed abolition of the AJTC to be a regressive step.
11. First, the AJTC was the first, and so far only, public institution to have in its sights the administrative justice 'system' as a whole, not just a part of it, like its predecessor the Council on Tribunals. In that context it has enjoyed a privileged overview of the system in all its parts: administrative court, tribunals, ombudsmen and first-instance decision-makers.
12. Secondly, the AJTC has a particular eye for the user perspective and reflects that perspective in its composition.
13. Thirdly, from my unique perspective I can say with confidence that the AJTC is the only organisation that has a UK perspective on administrative justice. The interlocking relationship between the Council itself and its Scottish and Welsh Committees, alongside its strong contacts with administrative justice in Northern Ireland, enables the AJTC to stay close to developments within each nation, as well as to the different perspectives that each nation has on matters of common concern. As a result, the AJTC has a unique role to play as the devolution settlement continues to evolve, with all its constitutional complexity.

Ability of the Ministry of Justice to carry out the functions of the AJTC

14. My extensive contact with the Ministry of Justice, in its various guises over many years, gives me no confidence whatsoever in the ability of the Ministry to assume the functions of the AJTC. However well-meaning and diligent individual officials may be, the Ministry simply lacks the institutional history, capacity and technical knowledge to do so.
15. I therefore consider that none of the core functions of the AJTC will be adequately covered by the Ministry. There will not be a competent organ of government to keep

under review the administrative justice system as a whole; nor will there be anybody with the capacity and expertise to keep under review, and report on, the constitution and working of 'listed' tribunals or of statutory inquiries.

16. I do not believe that the Ministry would be able to bring to the task of considering how to make the system more accessible, fair and efficient anything like the resourcefulness and expertise of the AJTC. The capacity for envisioning the future development of administrative justice and for formulating proposals for change and research would be hugely, and irreversibly, depleted.
17. In addition, the fact that the Ministry is a government department means that, by definition, it lacks the essential independence of judgment and freedom of action to challenge policy proposals as enjoyed by the AJTC. That factor alone undermines the ability of the Ministry, or indeed any other central government department, to replicate the AJTC's current function.

Impact on the Ombudsman

18. When the Parliamentary Ombudsman was established by statute in 1967, the expectation was that the Ombudsman would be integral to the wider system of administrative justice that was beginning to emerge in the aftermath of the Franks Report in 1957.
19. Although the number of ombudsmen and other complaint handlers has grown significantly in the interim period, and although the administrative justice system as a whole has continued to evolve, with the exception of the AJTC there has never been a public institution charged with the task of ensuring a due measure of coherence and integration.
20. The existence of the AJTC has provided the Parliamentary Ombudsman in particular, and ombudsmen and complaints handlers in general, with a forum for forging a shared outlook with other parts of the system, and for achieving a voice that is independent of government and that has the interests of ordinary citizens as its focus.
21. The abolition of the AJTC would therefore have the direct impact of denying the Parliamentary Ombudsman such a forum and such a voice, and thereby of depleting the efforts of the Ombudsman to shape the administrative justice agenda by reference to the empirical experience of handling citizens' complaints.

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

November 2011

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

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

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

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

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

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

Re: The Abolition of the Administrative Justice and Tribunals Council

Dear Mr. Osbourne,

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

The point of the tribunal system, which began piecemeal before the First World War, was to ensure that millions of citizens with disputes concerning statutory entitlements could have

recourse to adjudication that is quick, efficient, and fair. The system was designed to be both cheaper and fairer than courts. The system was overhauled by the Tribunals and Inquiries Act 1958 (passed under the Macmillan Government after the receipt of an important Report of a commission headed by Oliver Franks). The Report found that tribunals should be considered in principle to be part of the machinery of adjudication rather than administrative organs of the departments they reviewed. But the Report acknowledged the distinctive, non-judicial virtues of tribunals. The ‘central proposal’⁴ of the Report was that there should be a permanent Council on Tribunals to provide general oversight, consisting of legal and lay representation, the latter being predominant. The 1958 Act created the Council, whose oversight reflected the tribunal system’s distinctive origins, culture, and delicate balance between bureaucratic efficiency and fairness to users. The Council provided such oversight for nearly half a century.

The Tribunals, Courts and Enforcement Act 2007 unified the tribunal system by removing them from the departments and formally placing them under the wing of the Ministry of Justice (MoJ)(formally through the Tribunals Service, an executive agency of the MoJ). However, the Act continued to recognise the distinctiveness of tribunal adjudication, and also sought the greater use of non-judicial approaches to what the 2004 White Paper called ‘proportionate dispute resolution.’⁵ The newer use of the term ‘administrative justice’ intended, among other things, a greater emphasis on ‘moving out of courts and tribunals disputes that could be resolved elsewhere’ (para. 1.13), chiefly through mediation, arbitration, and the involvement of the various ombudsmen. This was viewed as both *cheaper* for the state and *better* for users. These changes required reinvigorated oversight and a body to generally ‘keep under review’ (TCE Act 2007) and advise upon the operation of the administrative justice system. The Council on Tribunals was thus replaced with the AJTC, which *expands and fortifies* the role previously played by the Council on Tribunals.

The seminal, pre-White Paper Report by Sir Andrew Leggatt called the proposed AJTC ‘the hub of the wheel of administrative justice.’⁶ This metaphor makes explicit the central, pivotal role the AJTC is meant to play in the new system.

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

1. **The AJTC is crucial for ensuring the distinctiveness of tribunals from the common law judicial process.**
 - Tribunal judges use a non-adversarial, or managerial, approach that is meant to assist the parties with their submissions. Parties are frequently unrepresented and research has shown this has a large impact on success rates. The more interventionist judging model is crucial for meeting, at least half-way, the mounting calls for state-funded legal

⁴ HW Wade and CF Forsyth, *Administrative Law* (10th Edn, OUP 2010) p.773.

⁵ *Transforming Public Services: Complaints, Redress and Tribunals* (Cm. 6243 (2004)) (<http://www.dca.gov.uk/pubs/adminjust/transformfull.pdf>).

⁶ Report of the Review of Tribunals by Sir Andrew Leggatt, *Tribunals for Users: One System, One Service* (2001)(<http://www.tribunals-review.org.uk/leggatthtm/leg-00.htm>)paras. 7.45-7.51.

representation before the tribunals.⁷ The more tribunals are viewed as courts, the more unsustainable the restricted access to Legal Aid will become.

- The administrative justice landscape was explicitly meant, in the new system, to move beyond adjudication, for reasons of economy and justice. This orientation is distinctive and requires specialist review and guidance.

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

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

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

- *Even if* the MoJ could ultimately take on such a role, it would not represent any greater value for money. The AJTC budget is approximately £1 million a year, over £400,000 of which is paid to MoJ and Scottish Government staff seconded for that purpose.⁸ That is excellent value for money for the oversight of a system in use by probably a majority of the population at some point in their lives.
- As noted above, a key theme in the history of tribunal adjudication and in the recent reforms was keeping costs low. The AJTC facilitates this by exploring cheaper, less formal dispute resolution options that involve a lower likelihood of appeals than would be the case in a more judicialised model. MoJ staff, lacking the range of expertise of AJTC staff, would not be able to do this.

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

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

⁸ Administrative Justice and Tribunals Council, Annual Report 2009, p.40 (<http://www.ajtc.gov.uk/docs/Final.pdf>). Members' retainers and travel costs amount to £292,228, whereas other Agency Costs amount to £103,907. A complete breakdown is available on p.40 of the Annual Report.

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

December 2011

Written evidence submitted by Ministry of Justice (OAJ 07)

Executive Summary

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

The issue

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

Administrative justice policy in the future

3. The Department is undertaking an existing programme of work, and has teams currently organised around four broad themes:
 - The creation of new appeal rights, new jurisdictions and support for the transfer into HM Courts and Tribunals Service (HMCTS) of existing tribunals and bodies. This includes working with other government departments on policy development and the requirement for an appeal right or other form of appropriate redress and supporting the delivery of projects such as the creation of a First-tier Tribunal, Property, Land and Housing Chamber.
 - Support for the Tribunal Procedure Committee including the provision not only of secretariat support for the committee itself but also the interface between the committee, officials and key stakeholders and the management of the statutory instrument process seeing rule changes through to their commencement;
 - Strategic policy issues which cut across the administrative, civil and family jurisdictions - including proportionate dispute resolution, mediation, greater use of technology, and the information available for users;
 - Working with other government departments to keep the whole of the administrative justice landscape under review, whether within central or local government ownership. For example, MoJ is working in partnership with the Department for

Work and Pensions and its agencies to improve first stage decision-making, for the benefit of the user and to reduce the pressure on the appeals system, by reviewing end to end dispute resolution and feedback arrangements. The Department will spread lessons learned among decision making bodies to drive up standards.

4. The Department also works closely with the Cabinet Office on ombudsman policy, and works collaboratively with the Parliamentary and Health Service Ombudsman. Whilst maintaining the independence of the ombudsmen these interactions enable the Department to be in a good position to raise the profile of other public service ombudsmen across Whitehall. The Department also works closely with the devolved administrations to develop an overview of the wider system, across the UK, sharing best practice and ensuring appropriate consistency in rules and processes. There is also cross-border judicial oversight, coordinated by the Senior President of Tribunals.
5. The views of users will continue to form a central part of how the Department exercises its policy responsibility for the administrative justice system. The Department does, and will continue to, take account of the views of service users. It will consult widely with experts, including those who represent users, as part of the policy formulation process. This is in addition to the user groups which almost all jurisdictions have, and which enable users to discuss issues of concern with the judiciary and HMCTS management. These groups operate at national and local levels, and bring together representatives of the public who use tribunals services, professional groups (such as the Bar and Law Society), the judiciary and officials.
6. The Public Bodies Bill, which is nearing the conclusion of its Parliamentary passage, includes provision to abolish, by order, the Administrative Justice and Tribunals Council (AJTC). As the Government has made clear in its consultation paper and during the passage of the Bill, whilst it appreciates the work undertaken by the AJTC in respect of administrative justice, in particular the support provided to the development of the unified Tribunals Service, it believes the functions performed by the AJTC are either no longer required, or more properly carried out by Government.
7. The Department is of the firm view that the development of administrative justice policy is properly the function of Government. An advisory body working in this area means duplication of effort and resources. While the AJTC is an arms length body, the Government's view is that independence in this sense is not a prerequisite for policy advice on administrative policy, just as it is not for any other policy area; officials, working in close consultation with stakeholders, can provide Ministers with balanced, objective, impartial and expert advice. The abolition of the AJTC will also deliver financial savings.
8. In reviewing the Ministry of Justice's arm's length bodies, including the AJTC, Ministers took into account cost, comparative value for money and whether a body's functions are still required when deciding whether to include them in the Bill. This review concluded that the AJTC should be abolished, but that some other of the Department's arm's length

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

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

Conclusion

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

November 2011

Written evidence submitted by PCS (OAJ 08)

Introduction

1. The Public and Commercial Services union (PCS) is the largest trade union in the civil service with over 280,000 members in the civil service associated private bodies. This includes over 15,000 staff working in the Ministry of Justice (MoJ). We represent staff across a number of grades in the Administrative Justice and Tribunals Council (AJTC).
2. PCS believe, as does the AJTC Chairman Richard Thomas, that the AJTC should not be abolished and its functions should be placed within the MoJ. Placing the roles and functions within the MoJ does not make sense as it would effectively mean that the Ministry would be its own watchdog.

The role of the AJTC

3. The AJTC is fundamentally important to citizens, particularly those who are the victims of procedural error, cancelled and badly administered tribunals. In the past the Chief Executive has had to apologise for an inefficiently run Tribunals Service, delayed papers to the judiciary.
4. The AJTC is an independent body that acts as a watchdog to different tribunals and ombudsmen that work to different departments and particularly the tribunal services that are part of the MoJ. Under current proposals in the Public Bodies Bill this body faces being abolished and some of its scrutinising roles being taken in to the Ministry of Justice. This would undermine the vital independence of the organisation.
5. The AJTC carries out its function through oversight of the organisations, with whom over the years they have built up important trust and relationships, and through proactive policy work such as the recent work on 'right first time decision making.'
6. Increasingly the decisions made by tribunal services are being called into question with half of immigration cases being overturned on appeal and 42% of child support settlements being changed.

PCS concerns

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

8. Citizens and taxpayers need an independent body to ensure that their elected representatives and the judiciary do not exceed their powers. The abolition of the AJTC will be a mistake particularly at a time of upheaval and when there is increasing applications to tribunals and the proposed legal cuts which will, as Baroness Scotland of Asthal pointed out during the report stage debate of the Public Bodies Bill, “contribute to increasing delays in courts and tribunals that are already under pressure.”
9. Future proposals to increase unfair dismissals from one year to two years and charge fees to applicants will increase the importance of having a government body that can properly scrutinise tribunals. We are concerned that an abolished or “gagged” AJTC would be either an absent or toothless watchdog. The government has suggested that champions such as ‘Which?’ magazine could take over the role of the AJTC. PCS believe that it makes no sense to replace a watchdog of the tribunals with a consumer magazine. ‘Which?’ is a consumer group which only advise on bringing action under the Consumer Protection Act, an Act that does not cover Public Bodies.
10. It also should be noted that in the areas of civil and family justice the government has recognised the continuing need for an independent arms-length advisory body. It should not therefore be pressing ahead with the abolition of the AJTC.
11. It is at this very moment that the AJTC is needed to ensure that any changes or reforms do not result in a badly administered tribunal services which could result in increased travesties of justice.
12. On the aspect of savings, the AJTC has an annual budget of £1.3 million per year and its role in advising and warning the Ministry of potential travesties of justice or procedural mishaps would save the taxpayer millions if not more. As its arms length status makes it completely independent and not politically motivated the AJTC will not be pressurised by the judiciary, senior civil servants in the Ministry Of Justice or Ministers.
13. The Government has not attempted to cost its “dedicated team” in MoJ. The team is responsible for ‘business as usual’ recently transferred from the Tribunals Service, providing support to the Tribunal Procedure Committee and creation of the new Property Lands and Housing Chamber of the First Tier Tribunal. The resource available to replace the work of the AJTC appears to amount to little more than one or two newly-appointed officials who have administrative justice policy as part of their wider portfolio. There is no guarantee that even this resource will be retained for any length of time as the re-structuring of the MoJ’s justice policy group is still ongoing, with the risk that the staff concerned will be reallocated to work regarded as a higher priority at any time, as has already happened this year. It seems to us highly likely that this small resource will quickly be lost because administrative justice does not feature in MoJ’s published strategic plans. We do not accept that an advisory council of sixteen experienced and well-connected administrative justice experts, supported by a

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

14. It is concerning why the AJTC is being abolished since the volume of appeals has risen dramatically in the last few years and particularly in the Tribunals. It is also notable that the AJTC is shortly to publish a report that will challenge the government to recognise the scale of unnecessary cost generated by its own actions. The report will be critical of complex and badly drafted laws in some areas of administrative justice without strategic action to improve it.
15. It will also record their concerns about recent policy trends which create barriers to justice, including the reduction in legal aid, the introduction of fees and the unacceptable and growing delays in providing hearing dates for appeals.
16. There is surely an imperative need to have an arms length body to act as a government and judicial watchdog such as in a case where a Minister is alleged to have a conflict of interest in the reduction of legal aid and the insurance industry.
17. PCS believe that the government has also failed to take into consideration the fact that there are different types Tribunals in Scotland, Wales and Northern Ireland. In its creation of HMCTS it has rushed ahead with the creation of an organisation which takes no consideration of Scotland's different legal system and even "reserved" Tribunals, yet the HMCTS has control over Scottish Tribunals and the HMCTS exists for England and Wales. The unification of the courts and tribunals judiciary in and England and Wales under the Lord Chief Justice will have implications for cross border sitting. It seems that there was not enough consultation with the judiciary on this matter.
18. Tribunals are not just run by the MoJ. There are different tribunals spread across different government departments and local authorities. The AJTC has the skills and experience to oversee these tribunals and offer advice on improvements independently. These skills and experience cannot be guaranteed if it is abolished and its current functions are moved into the MoJ.

November 2011

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

ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL

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

Transition from AJTC

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

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

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

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

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

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

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

Net savings

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

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

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

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

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

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

Justice councils

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

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

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

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

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

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

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

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

Finally, copies of the correspondence you requested are enclosed.

Annex A

ROLE OF & THE CIVIL JUSTICE COUNCIL

Background

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

Role

- The CJC provides advice to the Secretary of State, the Judiciary and the Civil Procedure Rule Committee on the effectiveness of aspects of the civil justice system, and make recommendations to test, review or conduct research into specific areas.
- The CJC meets at least three times a year and agrees formal responses to consultation papers and well as working with government on the detail of policy design (e.g. most recently on the detail of Lord Justice Jackson's reforms to the cost of civil litigation which the department is taking forward). It also plays a mediating role, bringing different sides together as demonstrated by its role in mediating agreement to the Road Traffic Accident protocol for low value personal injury claims, and the fixed costs within it.
- Members appointed to serve on the CJC follow the code of practice of the Office of the Commissioner for Public Appointments (OCPA) and are unpaid.

Membership of the CJC is made up from the following groups

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

Executive Committee Members of the CJC are:-

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

Funding of the Civil Justice Council

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

ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL

Background

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

Role

- The AJTC, which cover England, Wales and Scotland, has certain statutory functions. Its key functions can be summarised as: keeping the overall administrative justice system and most tribunals and statutory inquiries under review; advising ministers on the development of the administrative justice system; putting forward proposals for changes and making proposals for research.
- The Council meets monthly and produces reports on specific topics; responds to consultations and; monitors the Government's legislative programme. Members also observe tribunal hearings.
- Members, who are remunerated, are appointed to serve on the AJTC after an open and transparent recruitment process which complies with the Code of Practice of the Office of the Commissioner for Public Appointments.

Constitution

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

- Richard Thomas CBE, Chairman
- Richard Henderson CB, Chairman of the Scottish Committee

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

The Scottish Committee

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

The Welsh Committee

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

Governance

- The AJTC is sponsored by the Ministry of Justice
- The budget allocation for 2010/11 was £1.318m

FAMILY JUSTICE COUNCIL

Background

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

Role

- The FJC has the following core roles:
 - Promote an inter-disciplinary approach to family justice
 - Provision of inter-disciplinary training
 - Promote good practice
 - Advise on reforms necessary for continuous improvement

Membership

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

Executive Committee Members of the FJC

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

Its members include:

- a family division high court judge
- a circuit judge
- a district judge (county courts)
- a district judge (magistrates courts)

- a lay magistrate
- a justices clerk
- two family barristers
- two family solicitors
- a family mediator
- a paediatrician
- a child mental health specialist
- a director of local authority children's services
- an academic
- a person appointed for their knowledge of family justice from a parent's point of view.

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

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

Governance

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

ANNEX B

Letter from Jonathan Djanogly MP, Parliamentary Under-Secretary of State, Ministry of Justice to Dr Jeff King

REVIEW OF THE MINISTRY OF JUSTICE'S ARM'S LENGTH BODIES ABOLITION OF THE ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL

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

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

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

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

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

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

I agree that the distinctive features of tribunals which make them accessible for users are important and I can assure you that the MoJ is committed to ensuring that the specialism and the unique and distinctive features of tribunals will be preserved. The Lord Chancellor, in announcing proposals to bring the tribunals judiciary under the

overall leadership of the Lord Chief Justice said in a Written Ministerial Statement on 16 September, that our shared vision is to work towards a unified judiciary encompassing both courts and tribunals. This could be achieved, so far as England and Wales are concerned, by transferring the statutory powers of the Senior President of Tribunals to the Lord Chief Justice, and creating a new office of Head of Tribunals Justice with a statutory obligation to protect and develop the distinct and innovative features of the tribunals.

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

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

December 2011

Supplementary written evidence submitted by AJTC (OAJ 10)

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

AJTC Strategic Plan 2010-13

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

Impact

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

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

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

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

- persuading the General Medical Council to develop more robust and independent arrangements for Fitness to Practice cases;
- supporting the Traffic Commissioners and the Parking Adjudicator to assert their independence from, respectively, the Department for Transport and local authorities;

- convening and chairing the Mental Health Advisory Group, which regularly brings together all the main judicial, professional, medical, advocacy and administrative participants in mental health appeals;
- performing a similar role for the War Pensions & Armed Forces Compensation Stakeholder Group;
- (via our Scottish Committee) taking a leading role in the development of the Scottish Tribunal Service;
- (via our Welsh Committee) persuading the First Minister to create an Administrative Justice Unit to start coordinating fragmented activity;
- hosting a series of conferences and consultative events, enabling administrative justice participants to meet in neutral space.

The cost of the AJTC

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

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

HM Courts & Tribunals Service: benefits to tribunals

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

Tribunals deal for the most part, although not exclusively, with citizen versus state rather than party and party disputes. They are part of a wider administrative justice system with

close links to the process of decision making in Government, local government and other agencies. The remit of the Tribunals Service recognised this and it had begun some valuable early work to explore alternative approaches to dispute resolution and to collaborate with government departments with a view to getting more decisions right first time. We are concerned that this work will not receive the attention it previously did in the Tribunals Service and that the consequential savings will not be achieved.

December 2011

Written evidence submitted by Centre for Justice (OAJ 11)

Executive Summary

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

Introduction

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

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

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

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

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

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

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

What mechanisms are available: the present landscape

Present mechanisms for the protection of rights in the public sector consist of the courts, a variety of tribunals and the various ombudsman services (principally the Local Government Ombudsman (LGO), the Parliamentary and Health Service Ombudsman (PHSLO) and the Housing Ombudsman (HO)). The courts are viewed by many as slow, costly, cumbersome and high risk. It can still take years for a matter to work its way through the courts to final appeal. The stress and cost for the individual can be damaging, if not ruinous, and going to court is beyond the means of all but the wealthy, or those rare few who will in future still

qualify for legal aid or be able to persuade a lawyer to take on their case on a conditional fee agreement. Lawyers working in the field acknowledge that litigation or process risk is of the order of 30% making the outcome of court proceedings highly uncertain. Lawyers consistently advise clients not to go to court, if this can be avoided, and the courts themselves are encouraging increasing use of alternative dispute resolution (ADR).

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

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

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

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

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

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

For every £1 spent on their investigation service the ombudsmen awarded only 11p (LGO), 1.2 p (HO) and 1.4p (PHSO).⁹

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

(These figures compare with the compensation ratio for the service Cfj have been trialling where for every £1 spent, the compensation awarded or agreed averages £10.03. What is particularly interesting is that these figures are generally agreed and the 'defendant' has in

⁹ Figures given in this paper can be substantiated and sourced on request. Sources have not been included due to the shortage of time as Cfj has been asked to make a late submission.

each case expressed itself satisfied with both the service and compensation agreed. This indicates that the service is delivering the right results but very much more cost efficiently. It is evident that government bodies can have a service which awards compensation they are happy to pay, but at a very much lower cost than they are presently paying).

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

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

The abolition of the AJTC

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

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

What is needed

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

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

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

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

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

Cost savings and efficiencies

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

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

It is estimated that anything up to 10% of public resources can be consumed in low to high level conflicts and disputes. This is in addition to the unnecessary legal costs of pursuing and defending claims through the courts. Even in the private sector top executives have been shown by research to spend 20% of their time in dispute resolution and that a dispute of no more than £1million in value will, if contested in court, typically take up over three years in total management time¹⁰. The resources diverted from front line services in this way are enormous. This waste is avoidable.

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

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

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

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

Conclusion

Through this modern and more enlightened approach to dispute resolution the government can not only improve redress and access to justice, but save money and safeguard and

¹⁰ See note 1 above on sources.

improve services. It is a clear win-win situation and one that needs to be pursued urgently in these difficult times.

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

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

Note

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

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

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

January 2012