



Ministry of
JUSTICE

**Government Response to the
Public Administration Select
Committee report on the future
oversight of the administrative
justice system**

May 2012



Government Response to the Public Administration Select Committee report on the future oversight of the administrative justice system

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

May 2012

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Government Response to the Public Administration Select Committee report on the future oversight of the administrative justice system

Overall response

The Government welcomes the Public Administration Select Committee's report 'Future oversight of the administrative justice system: the proposed abolition of the Administrative Justice and Tribunals Council (AJTC).

The administrative justice system plays a vital role in upholding the rights and entitlements of citizens. Millions of decisions are made each year by central and local Government bodies, as well as bodies in other sectors. Of those that are challenged, only a fraction is referred to tribunal. Even so, in 2010/11 the then Tribunals Service received over 800,000 cases dealing with issues as diverse as immigration and asylum, social security, employment and mental health. Given its scope and the impact it has on the lives of so many citizens, the Government does not underestimate the importance of having in place the effective systems, services and institutions needed to underpin administrative justice.

There have been significant developments in the administrative justice system since the introduction of the Tribunals, Courts and Enforcement Act 2007 and the establishment of a unified Tribunals Service which is now part of HM Courts and Tribunals Service.

The Government is pleased that the Committee agrees that policy development for the administrative justice system rightly sits with the Ministry of Justice and that HMCTS can effectively manage the operational performance of the majority of that system. The Government remains unconvinced that a publicly-funded body such as the AJTC provides a necessary function in addition to this, particularly in the current financial climate. Further development of the system and improvements in initial decision-making can be equally, if not more, effectively influenced from within Government.

The Government recognises that the progress that has been made in UK-wide tribunals since 2007 has not been fully replicated in the tribunals devolved to the Welsh Government. Given the concerns of the Welsh Government, we have decided to delay laying the order for the abolition of the AJTC until suitable arrangements can be made to support the reform programme in Wales. This delay does not alter the Government's intention to abolish the AJTC in its current form as soon as is practicable.

Recommendations

Proposal to abolish the AJTC

Paragraph 27: The Government has argued that the AJTC fails to meet its three criteria for deciding whether to retain a public body. But it could be, and has been, argued that the AJTC in fact meets all three of them: that it is "needed in order to perform a technical function"; that it benefits from being "politically impartial"; and that it is "needed to act independently in order to establish facts" about the administrative justice system.

The Government continues to believe that the AJTC fails to meet the three criteria applied to bodies under the Public Bodies Act 2011.

The Government believes that the AJTC is not required to perform a technical function, and indeed has not been performing such a role. The AJTC does not provide technical advice on the application of law but advice on the policy or processes of Government, informed by a level of technical expertise. As the Committee states, development of policy can and should be performed by policy officials within Government, informed by the full array of technical expertise available through consultation.

Given the maturity of the system that has developed in the administrative justice landscape, the Government believes that there is no compelling case for a policy advice function that is politically impartial or independent. The introduction of a unified HMCTS means that all tribunals under HMCTS are subject to suitably rigorous operational scrutiny. Challenge of Government policy can be and is received through other channels such as consultations. It is not in the interests of the taxpayer to fund a standing body to provide such a challenge.

Consequences of abolishing the AJTC

Paragraph 28: We recommend that the Government provide further information on its proposals for the membership and operation of this group of experts and key stakeholders.

The Government recognises the particular value of the user perspective in the administrative justice system, given its status as a more user-friendly alternative to other, more formal routes to justice. While the AJTC has always had a user focus, we believe there are simpler and more direct means to capture and reflect user insights and concerns in policy. The Advisory Group the Ministry of Justice has set up will have a specific remit to gauge how administrative justice is working for users; identify areas of concern; and provide early, informal, testing of policy initiatives from the user's perspective. The Group will provide a direct link between Ministry of Justice policy and the

organisations who work with users of the administrative justice system day in and day out.

The Advisory Group will be chaired by the Ministry of Justice director responsible for administrative justice. Membership of the group has been invited from across a range of user-focused bodies, including:

- Citizens Advice Bureau
- AdviceUK
- Free Representation Unit
- Parent Partnership Network
- Immigration Law Practitioners' Association
- MIND
- Care Quality Commission
- Civil Mediation Council
- Coram Children's Legal Centre

We have also invited representatives from HM Courts and Tribunals Service and the British & Irish Ombudsman Association to join the group.

The group is meeting for the first time on 10 May 2012 and will include discussion of its proposed terms of reference. Its membership will be flexible to enable the involvement of other groups with relevant insights to test the development of specific policy initiatives and to respond positively to any changes in the administrative justice landscape. This Group will not replace full and formal consultation when it is required.

Resources and expertise

Paragraph 35: Alongside the draft Order to abolish the AJTC, the Ministry of Justice must make available further information about the number, turnover and expertise of the civil servants who would become responsible for taking on the AJTC's functions, and provide verifiable assurances about staffing plans in this area for the foreseeable future.

The Government notes the Committee's recommendation and will provide further detail on the makeup of staff working on administrative justice policy within the Justice Policy Group (JPG) of the Ministry of Justice when laying the draft Order.

All staff within the Justice Policy Group in Ministry of Justice have been assessed or recruited to ensure that they meet the professional standards required in a policy environment. As such they are able to be deployed flexibly across non-specialist policy functions. Administrative Justice has been designated a non-specialist area of policy.

An action to develop a strategic work programme for administrative justice will be included in the MoJ Business Plan and remains a priority in the Justice Policy Group's policy plan. All Departmental business plans will be published by the Cabinet Office shortly.

The Government recognises the importance of administrative justice and the role it plays for achieving redress for citizens. The policy team is able to draw upon technical expertise from delivery arms such as HMCTS; corporate services, such as finance and analytical specialists; and external bodies or individuals.

The Justice Policy Group in MoJ operates on a flexible resource management basis. The actual number of staff and amount of their time committed to administrative justice issues will be responsive to the demands of the work set by Ministers. The MoJ is committed to ensure that resourcing remains sufficient to meet the Government's policy aims in this area.

Cost savings

Paragraph 51: The Government estimates that abolition of the AJTC could save approximately £4.6 million by 2015, but this assumes that the AJTC would not be required to reduce costs and improve efficiency like other public bodies. We also suspect that the full cost of carrying out these functions within the MoJ has been underestimated. We therefore doubt this estimate. The Government should provide a more detailed estimate, which addresses these points before asking Parliament to approve an abolition Order.

The Government notes the Committee's recommendation and will provide further details, before Parliament is asked to approve the Order. The difference in the savings estimates are the result of delay to closure. We are now expecting to make an estimated £2.8m out of an original savings estimate of £4.3m. The methodology adopted by Ministry of Justice to establish the estimates provided in evidence is in line with HM Treasury's methodology for estimating total savings in the Spending Review.

This approved approach compared the economic benefit of closure against the 'do nothing' option, where total baseline costs rise with inflation. The Government recognises that comparisons could be made with other options, such as effecting cost savings within the AJTC. There is a limit to the cost savings possible for AJTC to continue operating at an acceptable level given its current statutory structure. An updated analysis of cost savings realised by AJTC's closure will be provided when the order is laid.

Paragraph 52: The proposal to abolish the AJTC makes it all the more clear that the Government's priority should be to improve its own decision-making and redress systems. We recommend that the Government sets out plans to achieve this improvement. This is an area into we will inquire in depth during this Parliament.

Paragraph 54: The Government acknowledges that its decision to abolish the AJTC should “not reflect on the quality of the work [it] has done” and recognises the need “to retain the best of what the AJTC has to offer”. The judgment for the House when the draft Order is laid is not just whether the AJTC should be abolished, but also whether sufficient and appropriate provision has been made for the continued performance of any necessary functions previously carried out by the AJTC. If it is retained or a successor body established, then it will be necessary to review its functions in order to improve its effectiveness. Either way, the Government’s objective must be to achieve substantial improvements in both administrative justice and savings in public expenditure. This can only come from reducing the number of administrative decisions wrongly made in the first place.

The Government agrees that there is scope for improvement in the decision-making performance of its bodies. However, the reasons why decisions are overturned by tribunals are varied both within and between jurisdictions. The Government does not accept that the AJTC is able to bring about significant improvements in this area. Analysis of data on trends and issues arising from the administration of tribunals is now carried out by HMCTS as a matter of course. Using this analysis to develop targeted approaches that deliver improvements – whether in initial decision making or other parts of the administrative justice process – can be more effectively and efficiently undertaken by officials in the Ministry of Justice and HMCTS, working with colleagues across Government.

Conclusion

Paragraph 45: It is clear that there is a fundamental difference of view between the Government and others from whom we have heard on both the need for independent oversight of the administrative justice system, and the extent to which the AJTC has been performing such a function. We accept that this task may be undertaken in more than one way, but consider that oversight by an entity independent from Government is valuable and should be continued in some form. This should be a key consideration in deciding whether or not the AJTC should be abolished.

Paragraph 55: As a government department, the MoJ's thinking and decisions will inevitably be constrained by the need to reflect Government policy and budgetary constraints. The AJTC has provided an independent overview of the administrative justice system from outside these constraints. One key question for the House is whether this independent overview continues to be required. Its characteristics include:

- A user-centred perspective on the administrative justice system
- Independent scrutiny and observation of tribunal/inquiry hearings
- The ability to report publicly, in an independent and fearless way, on issues affecting the administrative justice system, and Government proposals affecting it.

The MoJ, as a part of Government, cannot replace these functions. If these are functions worth preserving, the Government will need to revisit its plans.

The Government agrees that the independent nature of the AJTC and its ability to report publicly and in a “fearless way” cannot be replicated by Government. However, the Government disputes that the improvements in the administrative justice system sought by the Committee will be best achieved through the continued funding of this oversight function. The MoJ will retain the ability to commission independent reviews or research projects where specific issues arise. Such work will be informed by continuing engagement with stakeholders from a number of fields, including those that sit on the Advisory Group or academics.

The tribunal framework allows further routes of redress where citizens continue to feel that they have not received a fair hearing – either through onward appeal routes or judicial review. The development of the Tribunal Service and subsequently HMCTS has allowed more robust scrutiny and performance management of tribunals, independent of the bodies whose decisions are appealed. The development of a rationalised tribunal system under HMCTS has gradually eroded the need for the further layer of scrutiny offered by the AJTC. This fact is reflected in the reduced emphasis on visiting and reporting on the functioning of tribunals in the AJTC's business plans of recent years.

Paragraph 44: We agree that responsibility for the development of government policy in relation to administrative justice properly lies with the MoJ (although we do not share the MoJ's view that this is a function currently duplicated by the AJTC). We also accept that the creation of the new Courts and Tribunals Service means that many of the specific functions of the AJTC, in particular in relation to tribunals, have been taken over by the Tribunals Service. If the AJTC is retained, its functions will need to be reviewed and may need to be revised.

Paragraph 56: The MoJ's current interest in the administrative justice system does not cover the full breadth of the AJTC's remit. We have also heard concerns about the MoJ's staffing complement, turnover and expertise. The other key question for the House is whether the MoJ is therefore adequately resourced to provide the policy functions currently carried out by the AJTC, in particular:

- **Provision to Ministers of detailed technical advice by experienced practitioners on the operation of all parts of the administrative justice system, including those which fall outside the MoJ's responsibilities**
- **Oversight of the administrative justice system as a whole including ombudsmen, tribunals outside HMCTS, and alternative dispute resolution mechanisms, across England, Wales and Scotland.**

The Government is pleased that the Committee agrees that policy on administrative justice rightly lies with the MoJ. The MoJ is developing a strategic work programme on administrative justice, taking into account current issues and concerns, as well as potential pressures. The role of ombudsmen, proportionate dispute resolution and improving initial decision making will all be considered as part of this work. As part of this programme, the MoJ will continue to work closely with the Cabinet Office, which oversees the role and performance of ombudsmen, and with other Government departments that retain oversight of appeal rights.

The Government recognises that policy for devolved appeal sits with the devolved governments. The Government notes that the Scottish Government has recently launched a consultation on its own plans for Administrative Justice and that the Welsh Government is undergoing a programme of tribunal reform similar to that already undergone by those across wider UK jurisdictions. Given the particular challenges in the Welsh devolved tribunal system, the Government has decided to delay laying the closure order until appropriate arrangements are agreed.

Paragraph 57: If the decision is taken to abolish the AJTC, we recommend that, in the interests of continuing transparency, the MoJ report annually to Parliament on the operation of the administrative justice system, including:

- **Details of the resourcing of the Department's administrative justice function**
- **Actions taken by Ministers and officials to improve the operation of the system**
- **Details of how the views of users of the administrative justice system have been sought and addressed**
- **Details of work undertaken with other Departments, devolved administrations and local government, to improve administrative justice for the citizen.**

The Government welcomes the interest of the Committee in the development of the administrative justice system. Arrangements will be made to report to Parliament on the issues suggested by the Committee, building on the annual report and statistics already published by HMCTS.



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