



Ministry of  
**JUSTICE**

# **Administrative Justice and Tribunals: A Strategic Work Programme 2013–16**

December 2012



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A Strategic Work Programme**

2013–16

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## Ministerial Foreword



The administrative justice and tribunals system is important. It ensures that the rights and entitlements of people are upheld by the public bodies that make decisions affecting their lives. It covers matters such as mental health, payment of benefits, educational needs and employment rights – issues that have a profound impact on millions of people every year.

Having grown organically for a number of years, the administrative justice system has seen a great deal of reform over the last decade, largely prompted by the review of tribunals carried out by Sir Andrew Leggatt in 2001. Legislative change, enacted by the Tribunals, Courts and Enforcement Act 2007, put in train many of the ambitions of that review leading to the much healthier system we now have in place today.

For the vast majority of appeal rights in this country we have established a unified tribunal structure separate from the departments making the original decisions. This has been hugely beneficial to those people seeking judicial redress, who have been able to access a more coherent, swift and responsive system.

We should not forget that our tribunals also hear claims from individuals in dispute with other parties, such as employees and employers or property disputes. The Employment Tribunal forms a distinct pillar of the tribunals system, playing a vital role in ensuring employment rights are properly upheld by employers. Some of the themes in this work programme will apply equally to such tribunals whereas others are aimed primarily at those parts of the system dealing exclusively with administrative justice.

The recent period of structural reform is now nearly at an end. The creation of the Property Chamber will be the last major plank in the unified tribunal structure administered by Her Majesty's Courts and Tribunals Service (HMCTS). The challenges ahead will be markedly different. I expect the focus of the Ministry of Justice to move away from structural reform and towards making the administrative justice and tribunals system work better for its users and offer greater value for money for the taxpayer.

The Administrative Justice and Tribunals (AJTC), and its predecessor the Council on Tribunals, has played an important role in overseeing and advising on the system as it has developed. As part of its review of public bodies in 2010, the Government decided that the function performed by the AJTC was no longer required and the body should be abolished. This decision reflects the changing nature of challenges in the administrative justice and tribunals system, but it does not underplay the considerable expertise the AJTC and its

committees have brought to the agenda. Much of the AJTC's work of recent years will help to inform specific proposals for reform as they are developed.

This strategic work programme sets out the Government's overarching objectives under six themes. The Ministry of Justice will need to work closely with other Government departments and authorities; delivery partners such as HMCTS; the Senior President of Tribunals and the judiciary; as well as users of the system and their representatives, to make real progress in this important area.

A handwritten signature in black ink, appearing to read 'Helen Grant', with a stylized, cursive script.

**HELEN GRANT MP**

**Parliamentary Under-Secretary of State for Justice**

## Introduction

1. Public institutions make many decisions on behalf of central and local Government which concern the rights or entitlements of individuals. Some of these decisions – such as whether someone is eligible for benefits or whether they should be allowed to remain in the country – have a profound effect on people’s lives. In a perfect world these decisions would follow the precise line and spirit of the law in all cases. However, the complexity, number and variety of individual circumstances and requirements can mean that this is not always straightforward to achieve. Public services and other bodies who make decisions that affect individuals – such as employers from all sectors – sometimes get it wrong.
2. With this complexity in mind, it is important that we have a system which is able to examine individual circumstances, rule on the validity of decisions where necessary and seek to correct systemic issues where they are identified. It is important to the individuals in question, who have rights and entitlements that may have been overlooked. But it is also important to public institutions themselves, since if they are incorrectly discharging Parliament’s intentions then this may have wider implications and costs. The system of administrative justice plays a vital role for individuals in their interactions with the state and in ensuring they have confidence in the administration of decisions and in their achieving redress when decisions are incorrectly made.
3. Much of the effort in the area of administrative justice in recent years has been geared towards establishing a suitable level of separation between the bodies making decisions and those – usually tribunals – that determine whether such decisions are correct. This separation helps to reinforce the public’s trust in institutions themselves and that justice will be served when individuals challenge decisions made about them. It ensures that those bodies examining decisions do not have any conflicts of interest in finding against the original decision, or the process by which the decision was reached. It should also enable open and honest feedback to encourage improvements in the quality of public institutions and their decision making.
4. We are now reaching the end of a period of significant structural reform in the area of administrative justice. An independent tribunal system has been created with two tiers, administered by Her Majesty’s Courts and Tribunals Service (HMCTS), and covering most of the key areas that attract appeals. This system also includes the additional pillar of the Employment Tribunal and the Employment Appeal Tribunal, which does not generally decide on administrative matters but on claims made by individuals in dispute with their employers.
5. With this period structural reform being close to an end, the time is ripe for re-focusing our objectives in the area of administrative justice and tribunals. We need to take stock of the progress that has already been

made and the new challenges we face, including the current economic environment and continued financial pressure on public services.

6. Our intention is now to move beyond structural reform, and separation of decision making from redress mechanisms, to making the independent administrative justice and tribunals system work more effectively and efficiently for its users and for the taxpayers who fund it. This overarching objective will be underpinned by our core principles of fairness, accessibility and efficiency.
7. This document, which sets out our commitment to a strategic work programme covering the 2013–6 period, contains 10 strategic objectives. These objectives fit under the following key headings:
  - Governance of the administrative justice and tribunals system;
  - Tribunals outside of the unified system and new appeal rights;
  - Funding of HMCTS tribunals;
  - Improving initial decision making;
  - Enhancing proportionality; and
  - Maintaining a user focus.
8. Chapters 1–6 below explain our plans under each of the headings and the linkages between them.

## Defining administrative justice and tribunals

9. The administrative justice system encompasses a broad group of bodies, functions and processes which enable people to raise grievances, challenge and resolve disputes against administrative or executive decisions made by or on behalf of the state. The system is also concerned with the quality of original decision making and the routes for challenging maladministration.
10. In drawing up the Ministry of Justice (MoJ) work programme as set out in this document, we acknowledge that some tribunals do not fall within the definition of administrative justice since they deal with disputes between two parties, rather than party versus state. These matters could be strictly considered to fall outside the scope of our interest here, but since such cases are heard by tribunals we believe it important to consider their related issues as part of this strategic work programme.
11. The MoJ considers that administrative justice and tribunals system covers the following services and functions:
  - the overall system by which decisions of an administrative or executive nature are made by bodies within central, devolved or local government or their agencies and the law under which such decisions are made;
  - publicly-funded regulators of the public and private sectors;
  - planning inquiries taking decisions on behalf of the state;
  - the internal review systems and various routes of redress against administrative or executive decisions, including dispute resolution, complaint processes, ombudsman schemes, tribunals, courts and judicial review of decisions; and
  - tribunals that rule on party vs. party disputes, such as employment and property claims.
12. This is a broad span of areas and means that the administrative justice and tribunals system is by its nature complex: delivered via a number of methods and dealing with a diverse range of issues. The MoJ is not directly responsible for all the services and functions in the system, but as the lead department in central Government for administrative justice and tribunals we have a strong interest in how the system is working across the piece. Oversight of this wide system is dealt with in **chapter 1** on governance of the administrative justice and tribunal system.
13. The MoJ's role in supporting improvements to administrative and tribunal justice will primarily lie in its work with those responsible for delivering justice services, such as HMCTS and the judiciary; service users (the individuals or groups that challenge decisions); and the departments,

authorities and other bodies that make the decisions in the first instance. We recognise that, in seeking improvements, we should avoid blanket, one-size-fits-all approaches given the significant differences between areas and diversity of issues in question (e.g. mental health, taxation, employment, and so on). Instead, we will consider how different parts of the system can best deliver services which meet appropriate standards of delivery. These issues are dealt with in **chapters 4 and 5** on improving initial decision making and enhancing proportionality respectively.

## Principles for administrative justice and tribunals

14. We believe that administrative justice should be underpinned by three key principles: **fairness, accessibility and efficiency**. The success of the improvements we make across the system will be measured against these principles. This is not to say that constituent bodies in the administrative justice and tribunals system should not adhere to additional principles but we would envisage all parts of the system to be fair, accessible and efficient.
15. In ensuring **fairness**, we expect the system to provide impartial and timely routes of complaint and redress which uphold the law. Fairness should be enshrined in all decision making and dispute resolution processes, and is preserved finally in the potential for an individual to seek redress through either a tribunal or court.
16. The systems that uphold justice in administrative decision making should also be **accessible**. Processes should, as far as possible, be understandable and navigable to the lay person. People should be helped to understand the decisions that have been taken about them, and provided with proportionate and transparent means of redress that empower them to resolve their problems as quickly as possible. The structures and procedures used within administrative justice and tribunals should recognise the needs of users.
17. Lastly, the administrative justice and tribunals system should aim to be **efficient**. This means incentivising state decision-making bodies to make correct and soundly-based decisions in the first instance and, where disputes arise, to provide proportionate forms of redress to allow parties to resolve their differences as quickly and simply as possible. Changes to the system should be made on the basis that service improvements also deliver cost savings. Efficiency is naturally a key consideration in addressing tribunal funding and fee issues and in enhancing proportionality, as set out in **chapters 3 and 5**.

## The current context

### Structural reform

18. Sir Andrew Leggatt's review of tribunals in 2001 – *Tribunals for Users: One System, One Service* – observed that, since statutory tribunals were recognised as part of the justice system in the Franks Report of 1957, a network of tribunals in the UK had grown organically but without any real cohesion. This report made a number of recommendations that have helped to shape and regulate the tribunals system that exists in the UK today.
19. The 2004 White Paper – *Transforming Public Services: Complaints, Redress and Tribunals* – set out a vision for an improved and seamless system of dispute resolution, with the largest tribunal organisations administered by central government. It set out the remit for a new Tribunals Service that would resolve disputes effectively and efficiently and stimulate improved decision making to avoid disputes wherever possible.
20. The Tribunals Service was created in 2006 and the passing of the Tribunals, Courts and Enforcement Act 2007 established a two-tier tribunals structure to manage tribunals independently from their sponsoring departments or public authorities. The Employment Tribunal, which decides mostly on party versus party disputes, forms a separate pillar in this system. These changes were major advancements towards achieving a coherent, independent and efficient tribunals system.
21. The establishment of the Property Chamber within the First-tier Tribunal will be the final major step in the completion of the vision to develop a unified tribunal structure. It will be the seventh Chamber in the first tier of the unified structure and will bring together jurisdictions concerned with property and lands: the Residential Property Tribunals, the Agricultural Land Tribunals and the Adjudicator to HM Land Registry. It is intended that the Valuation Tribunal England will also transfer into the Chamber. We are currently considering the most appropriate timescale for this transfer.
22. Following the establishment of a dedicated Tribunals Service, the creation of HMCTS in 2011 brought even greater scope to drive closer working and improved efficiency across courts and tribunals, for example through shared services, estates rationalisation and best practice.
23. In relation to structural reform, there is a question surrounding our approach to those tribunals which remain outside of the HMCTS-administered system. This issue is dealt with in **chapter 2** on tribunals outside of the unified structure.

24. Developments in Government policy and resulting legislation frequently require the development of new appeals rights. Government policy is that these should be heard in the unified tribunal system and the MoJ is presently engaging with other central government departments on the creation of over twenty potential new appeal rights that will come into force in the coming months. **Chapter 2** also deals with our future approach to the creation of new appeal rights.

### **Administrative justice work load and performance**

25. The caseload of the Tribunals Service has generally been increasing in recent years. It rose by over 50% in the five years between 2006/7 and 2010/11. Although it fell, by 11% in 2011/12 to a little under 740,000 receipts, it is likely that volumes will rise again after 2013, primarily as a result of planned welfare reforms.

26. Three tribunals account for over 90% of the caseload:

- the Social Security and Child Support (SCSS) Chamber received over 370,000 in 2011/12 (around half of the total caseload);
- the Employment Tribunal received over 185,000 cases (around a quarter of the total caseload); and
- the First Tier Immigration and Asylum Chamber received over 110,000 cases (15% of the total caseload).

27. Other tribunals generally deal with smaller case loads but decide important matters such as mental health appeals and special educational needs.

28. In 2011/12, tribunals made 732,600 disposals in all. The level of disposals has increased each year since 2007/08, and is the highest to date. Excluding disposals for those Tribunals that joined HMCTS in the last year, there was an increase of over 1% between 2010/11 and 2011/12.

29. Despite the rise in disposed cases, the overall number has not kept pace with the number of receipts (although disposals have outstripped receipts for some individual jurisdictions). In 2011/12, receipts were only 1% higher than disposals, but the overall caseload outstanding (cases not yet concluded) has continued to rise. At 31 March 2012, the caseload outstanding was around 756,000, an increase of around 1% on the number at 31 March 2011. Although this is a continuation of an upward trend, the rate of increase appears to have slowed.

30. Information about the outcome of hearings is available for the three largest jurisdictions. In 2011/12 there were 340,400 clearances at hearing – a 23% increase on the number during 2010/11 and continuing an upward trend. Of the 340,400, 35% were found in favour of the appellant.

31. More information on the work load and performance of tribunals under HMCTS can be found on the MoJ website:  
[www.justice.gov.uk/statistics/tribunals](http://www.justice.gov.uk/statistics/tribunals)

### **The Administrative Justice and Tribunals Council**

32. In the context of wider reform of public bodies, the Government has decided to abolish the Administrative Justice and Tribunals Council (AJTC). This decision was not made lightly. The AJTC – and its predecessor the Council on Tribunals – has played an important role in overseeing the administrative justice landscape while it has developed. It has produced a number of reports that have helped to improve our understanding of the administrative justice and tribunals system in the UK. The dedication and expertise of the AJTC has proved important while the tribunal system has gone through a period of transformation.
33. The Government believes that, as we enter a new phase in the development of administrative justice and tribunals, a new approach is needed. This paper sets out how the MoJ will drive improvements in the administrative justice and tribunals systems that have been put in place – for instance, by incentivising better first-time decisions or introducing more proportionate approaches to dispute resolution. These improvements will require close working with partners across Government and a more hands-on approach from the MoJ, including for those tribunals or administrative justice bodies that currently sit outside of the unified tribunals structure.
34. The Government believes that the independence of the tribunals system administered by HMCTS ensures that tribunal members and their administrative support systems are sufficiently removed from decision makers to diminish the case for a standing body to oversee tribunals. We believe that policy development and oversight of the wider administrative justice system should be led from within the MoJ.
35. The Government intends to close the AJTC using powers under the Public Bodies Act 2011 and the Order for abolition will be subject to the scrutiny of Parliament. Several strands of the strategic work programme will build on valuable work done by the AJTC.

## The Strategic Work Programme

### Chapter 1: Governance of the administrative justice and tribunals system

36. The MoJ is responsible for the administrative justice and tribunals system as a whole, but many of its constituent elements rest with other parts of Government. To take forward plans to improve the fairness, accessibility and efficiency of administrative justice and tribunals we will need to engage effectively with other departments and their agencies, particularly in those parts of the system that have the greatest impact on citizens' lives. Clear governance arrangements, built around accurate information on the performance of the system and the needs of users, will be essential. This will allow us to:
- ensure that parts of the system not currently under the direct influence of MoJ align with our overarching principles of fairness, accessibility and efficiency;
  - introduce greater transparency on how Government is improving administrative justice and tribunals; and
  - properly consider the user experience when making policy and operational decisions.
37. Our objectives for the governance of the administrative justice and tribunals system are:
- Objective 1: To strengthen arrangements with other departments and public bodies to oversee the development and delivery of administrative justice and tribunals policy.**
- Objective 2: To establish, encourage and maintain a user focus that supports open policy making.**
38. We will achieve **objective 1** by building on existing bi-lateral arrangements with the departments that use the tribunal system, refreshing formal protocols where they exist to:
- set clear expectations that inefficient use of the system will be managed down;
  - develop performance measures that encourage this; and
  - share good practice across the system.
39. We will further strengthen these bi-lateral arrangements by working closely with other key parties in the administrative justice and tribunals system – such as the judiciary, HMCTS, various public sector ombudsmen including the Parliamentary and Health Service Ombudsman (PHSO) and the devolved administrations – to support our consideration of performance issues and help spread good practice across jurisdictions.

40. We have already gone some way towards achieving **objective 2** by establishing the Administrative Justice Advisory Group, which met for the first time in May 2012. The Group is made up of representatives from organisations that work closely with users from across a range of interests in the administrative justice and tribunals system. This expert group will provide a vital perspective on the performance of and issues within the system to help the MoJ to develop policies for improving the system and delivery options that meet the needs of users. It will draw upon information captured by the MoJ from across the system, including jurisdictional user groups. We are currently finalising membership and terms of reference for the Group, which we will publish on the Justice website. We are particularly keen to ensure that it can properly reflect user interests in the devolved administrations. We will continue to develop the Group to ensure that it can play a dynamic role in helping to address issues for users.
41. To support the development of specific proposals under the actions in this work programme we will hold targeted policy sessions with academics, representative groups and a wide network of interested parties on priority issues.

### **Devolved Administrations**

42. HMCTS is responsible for the administration of tribunals in England and non-devolved tribunals. Certain elements of the administrative justice and tribunals system are devolved to Scotland, Wales and Northern Ireland. The picture is different in each case, meaning that the challenge to decide where processes need to be aligned and where they can be handled differently varies across each administration. The MoJ will work closely with each of these administrations to identify the best approach to overseeing the system and how it operates and coheres across borders.
43. Programmes are underway across the devolved administrations to improve tribunal services. Some jurisdictions are devolved – for example mental health in Scotland has its own tribunal – while others – such as immigration and asylum – are reserved, meaning they are managed by a UK-wide administration.
- In **Scotland**, as part of its Making Justice Work Programme, the Scottish Government is committed to reform the Scottish Tribunals System with the intention of reducing complexity for users of the system, enhancing judicial independence and increasing efficiency/economies of scale. The Scottish Tribunals Bill is expected to be introduced in 2013.
  - In **Northern Ireland**, proposals to reform tribunals system are underway with a consultation expected in early 2013.
  - In **Wales**, a programme of reform is underway in response to the recommendations of the 2010 review of Welsh tribunals conducted by the Welsh Committee of the AJTC.

44. Each of the devolved administrations is looking to build systems that separate appeal routes from initial decision makers, in line with the principles that led to the establishment of the First-tier and Upper Tribunal in the UK. We recognise there is still work to be done both to realise the benefits of independent, two-tier tribunals in each of the devolved systems and to ensure cohesion across the UK. We will continue to work closely with each administration to support their reform programmes, drawing up formal protocols where necessary.

## **Chapter 2: Tribunals outside of the unified system and new appeal rights**

45. A number of tribunals still exist outside the unified HMCTS structure. Government policy has been to bring all central tribunals into this structure in order to ensure a separation between the tribunal and the sponsoring department or public authority. However, transferring tribunal administration and judiciary into the HMCTS system can be resource intensive. With the majority of the restructuring work complete, we want to look more carefully at the case for transferring in those tribunals that remain outside of the unified system and commit resource only where there are clear benefits to doing so.
46. Some tribunals process appeals in a very different way to HMCTS tribunals. For example, the Parking and Traffic Adjudicators Tribunal deals with the majority of cases online or over the telephone, with adjudicators considering the evidence and resolving cases without a hearing. We are interested in learning from other tribunals and seeing what good practice we can use and share with those outside of the unified structure.
47. Our objectives for non-HMCTS tribunals and new appeal rights are:
- Objective 3: To prioritise tribunal transfers into the unified structure on a cost/benefit basis and to maintain oversight of those that remain outside of the system.**
- Objective 4: To ensure new appeal rights proposed by Government are fair, efficient and accessible.**
48. We will achieve **objective 3** by monitoring the performance of tribunals outside the unified structure, drawing on available performance data; annual reports; business or development plans; parliamentary, user and judicial feedback. We will use this to work with sponsoring departments to review and improve performance against the principles of administrative justice. We will consider the case for transferring specific tribunals into the unified structure where there are arguments for improving efficiency, proportionality or access to justice. Where there is a case we will include transfer work streams in our business plans.
49. We will achieve **objective 4** by developing a new framework for reviewing and handling appeal rights as they are proposed by policy makers in Government. We will work closely with other departments to streamline the process of considering proposals for new appeal rights before they are

more fully developed. This will mean that we are involved at an early stage to ensure that, where an appeal right is required, it is designed with the rest of the system in mind so that it is proportionate, drives the right incentives and is coherent with the rules and regulations of the wider tribunal system. We will develop this process – which we will call the appeal rights gateway – in consultation with other key delivery partners, such as the Tribunal Procedure Committee – in 2013/14.

### Chapter 3: Funding of tribunals

50. Core funding for HMCTS tribunals is provided through the MoJ's spending review settlement, and additional funding is negotiated with other parts of Government when policies cause major changes to the volume of appeals or claims. A small proportion (currently about 1 per cent, but set to rise in 2012/13) is derived from fees charged to appellants in certain jurisdictions.
51. Whilst the current arrangements offer certainty and simplicity, allowing investment in tribunal services, they also rely on the accuracy of other departments' forecasting. Arguably, current funding arrangements do not share risk in a meaningful way with users of the system – appellants, respondents or claimants – meaning that there is no immediate financial incentive to use the tribunal system efficiently.
52. We believe that we need to look carefully at whether the current arrangements provide the best means of achieving value for taxpayers. Public sector decision makers should be incentivised to get their decisions right in the first instance. In some jurisdictions there may be a case to increase the financial stake appellants or claimants have in the system so that they have the right incentives to make use of the system efficiently. Such considerations will need to be balanced with the need to maintain the independence of the tribunal from original decision makers and ensure fair access to justice for all.
53. Our objective on the future funding of tribunals is:  
**Objective 5: To scope, develop and implement clear, evidence based tribunal funding and fee models to reduce demands on the tribunal system.**
54. We will achieve **objective 5** by working with other departments to establish information on the full (end-to-end) costs of various types of appeal and dispute. We will use this information to test different funding and charging options, taking into account impacts on total costs, incentives for better use of the system and access to justice. Following this, we will assess the options we have modelled to reach a case for change.
55. Where new funding structures are found to be appropriate, we will work with HM Treasury and other departments to implement new arrangements as soon as is practicable. The case may be clearer in some jurisdictions than others, but ultimately, we would want to introduce any major changes to funding structures by the time of the next spending review period.

## Chapter 4: Improving initial decision making

56. Government departments, public authorities and agencies have a responsibility to ensure that as many decisions as possible are right first time. As a dispute proceeds through the process from the original decision maker through to resolution there will be an increase in the cost to and time required from both Government and users of the system.
57. Although there was a reduction in caseload in 2011/12, in general tribunal volumes have been increasing over the last decade. One of the central elements of the MoJ's Transforming Justice agenda is to reduce the demand on our services, where there may be quicker and less costly mean of redress (we look at this more in **chapter 5** below). However, we do not have consistent system-wide data on decisions taken by public sector bodies, nor on disputes resolved successfully before reaching tribunals. This makes it difficult to identify where there are genuine areas of concern with original decision-making bodies or where good practice is having an impact. It also does not allow us to identify where, in some areas, appeals to the tribunal may be the most effective and efficient mechanism for people to exercise their rights.
58. Although it can sometimes be challenging to match data from across different systems, we believe this kind of information should be available to make informed decisions about policies for service improvements. The Government aims to enable transparency by releasing raw datasets and provide the right to request these if they are not automatically released.
59. Performance data needs to be considered alongside the financial information we will use to scope funding and fee models (see **objective 5** above). This is to enable us to establish how much each aspect of the appeals system costs. Full system cost and performance information will allow Government to make smarter decisions on where to invest to improve decision making and the quality and speed of people's journey through the system.
60. While performance data will give the Government a better idea of how the system is being used, it won't tell the whole story. In some areas it may be perfectly understandable why a relatively large number of cases need to be heard by a tribunal. In other areas high appeal volumes may seem unnecessary, but it will not be immediately apparent what is causing them. An important factor in driving improvements is feedback to decision makers from the cases heard by tribunals. We have already implemented a number of approaches to improve the intelligence we gather on the cases that are heard by tribunals or by other parts of the administrative justice system. We want to build on this to get better real-time information on what is driving disputes and how we can adjust decision making processes to address them more efficiently.

61. Our objectives on improving initial decision making are:

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

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

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

63. We will achieve **objective 7** by building on recent achievements, particularly in the Social Security and Child Support jurisdiction, to identify new approaches for providing enhanced feedback from tribunals to decision makers. We will pilot approaches in 2013/14 and evaluate how useful different feedback sources are to improving decision making. This will inform our discussions with other parts of Government and allow us to target new feedback approaches where is most effective and will improve performance.

## Chapter 5: Enhancing proportionality

64. There are many stages in the possible lifespan of a dispute where resolution could be achieved: from the initial decision, to a complaint or appeal of that decision, to filing a claim or an appeal with the tribunal. From this point there are numerous stages within the tribunal process where resolution could occur, from the hearing itself, and in some cases within the courts by way of onward appeal or judicial review.

65. As with our objectives on improving initial decision making, there are clear advantages to resolving disputes at the earliest possible opportunity. Not only will this save on the costs of delivering each element of an appeals or claims process, but it will also allow users of the system – both appellants and respondents – to minimise the impact of an ongoing dispute on their time and resources. Disputes that are resolved quickly and at the right stage minimise the personal stress that can be caused and also enhance the trust users have in Government institutions and the administrative justice and tribunals system.

66. A significant amount of work relating to dispute resolution has taken place in recent years. The 2004<sup>1</sup> White Paper set out some terms for alternative techniques that can be used to aid resolution at certain points in disputes.

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<sup>1</sup> Department for Constitutional Affairs, *Transforming Public Services: Complaints, Redress and Tribunals* (November 2004).

In June 2011<sup>2</sup> the Government made a fresh commitment to promote and use the proportionate approaches, encouraging a best practice approach to managing and resolving disputes quickly and effectively. This commitment is echoed in the principles set out by the AJTC for a strategic approach to dispute resolution.<sup>3</sup>

67. A number of alternative dispute resolution processes have been tested by departments, businesses and tribunals. For example, formal pilots of two contrasting schemes – the Judicial Meditation pilot in Employment Tribunals in 2006<sup>4</sup> and Early Neutral Evaluation pilot in Social Security Appeals in 2007/08 – have been carried out and formally evaluated.<sup>5</sup>
68. There have also been changes to primary legislation, rules, panel composition, guidance and practice that go some way to advancing the use of more proportionate dispute resolution processes through the tribunals system. HMCTS has set out plans for changes to the administrative justice and tribunals system through streamlining and developing more effective processes using Lean techniques.<sup>6</sup>
69. Once efficiencies are realised this will enable us to help users of the justice system seek earlier resolution to appeals and disputes and may obviate the need for a formal oral hearing.<sup>7</sup> Oral hearings themselves can be conducted more effectively where the relevant issues and evidence have already been identified in prior steps.<sup>8</sup>

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<sup>2</sup> Attorney General and Ministry of Justice, *Dispute Resolution Commitment* (June 2011).

<sup>3</sup> Administrative Justice and Tribunals Council, *Putting it Right – A strategic approach to resolving administrative disputes* (June 2012).

<sup>4</sup> Urwin, P., Karuk, V., Latrielle, P., Michielsens, E., Page, L., Siara, B., Speckesser, S., Boon, A., Chevalier, P-A. (March 2010) *Evaluating the use of judicial mediation in Employment Tribunals*, Ministry of Justice Research Series 7/10, London: Ministry of Justice.

<sup>5</sup> Hay, C., McKenna, K. and Buck, T. (2010) *Evaluation of Early Neutral Evaluation Alternative Dispute Resolution in the Social Security and Child Support Tribunal*, Ministry of Justice Research Series 2/10, London: Ministry of Justice.

<sup>6</sup> *HMCTS Business Plan 2011 to 2015*, Section 2 HM Courts & Tribunals Service Business Priorities p.11.

<sup>7</sup> McKeever, G. and Thompson, B., (2010) *Redressing Users' Disadvantage: Proposals for Tribunal Reform in Northern Ireland*, Law Centre (NI).

<sup>8</sup> Written Ministerial Statement, *Complaints, Redress and Tribunals* Hansard source: 15 Jul 2004: Column WS67.

70. Our objectives on proportionality are:

**Objective 8: To promote early and proportionate dispute resolution across Government.**

71. We will achieve **objective 8** by working closely with partners across Government to identify where there is scope for more proportionate approaches to dispute resolution. We will support this by developing a framework that consolidates existing information on proportionate dispute resolution approaches into an inventory that compares data on caseload, timeliness, outcomes and user satisfaction. The framework will build on the AJTC mapping factors proposals, which will enable us to develop further options that more effectively deploy proportionate dispute resolution approaches at different parts of the system.
72. We will also seek to ensure that information on the effectiveness of various approaches is shared across existing and new jurisdictions, cementing dispute resolution as a real alternative to full tribunal hearings.
73. In parallel to this, we will talk with representatives of the dispute resolution services industry to support the promotion and development of any standards, guidance and self-regulation.

## **Chapter 6: Maintaining a user focus**

74. The MoJ recognises the need to place users of the system at the centre of our strategy on administrative justice and tribunals. The system must match the needs of all users if it is to be fair, accessible and efficient.
75. Gaining useful information on users of the system – and those that choose not to pursue appeals – is challenging. Most individuals will only access any particular part of the system once and will not necessarily know what to expect from it or be inclined to provide feedback. Yet their input is vital to ensuring that the changes we make to the system align with how users access it. The way we communicate with users allows them to make informed choices on whether and how to progress their cases.
76. We intend to look at new approaches that better tailor our services to users, taking learning from other parts of the justice system and wider government. This will help us not only to make improvements to the services we provide but also the way they are accessed. We know that one of the key areas we need to get right is signposting: we cannot expect the system to work effectively if users do not know what their options are, what they need to do to pursue their cases and how to navigate the system.
77. The Government's approach to digital communication is to make information as accurate, transparent and easy to access as possible. The structures of Government are not always intuitive to navigate for users. We will work closely with colleagues across Government and in our Digital Strategy team to make sure that communication routes are aimed

at the user rather than reflective of the way Government works, whilst providing accurate, detailed information for those that need it.

78. The Advisory Group we have established will play an important role by providing an expert view on emerging issues and in helping us to assess new policy proposals, particularly with regards to their impact on users.
79. Our objectives on user focus are:
- Objective 9: To develop improved information on and insight into administrative justice users to inform work on each strand of the strategy.**
- Objective 10: To ensure our communications to users encourage efficiency, support fairness and enhance accessibility to the system, and explore opportunities for digitising administrative justice processes to deliver the best service for our users.**
80. We will achieve **objective 9** by using the information we and others already gather on users, such as complaint data collected from individual tribunals; feedback from jurisdictional user groups; and users' input into Lean exercises carried out to ensure continual improvements in tribunal processes.
81. We will also look at where we believe there are major gaps in our knowledge about users and identify opportunities to make better use of targeted surveys, including online approaches.
82. We will achieve **objective 10** by using our governance arrangements with other departments and other administrative justice bodies to keep under review the information available to users and how it influences the way different parts of the system are accessed.
83. We will also support this work by implementing the MoJ Digital Strategy, which sets out how MoJ's services will become digital by default. This means that, wherever possible, our services – including information, transactions, and processes – will be delivered through digital channels rather than face to face, post or phone.
84. This move towards digital services is part of a wider drive by Government, and we are clear that it will need to be designed around the needs of users. Digital services should be so straightforward and convenient that all those who can use them will choose to do so. Those who may struggle to access or use our digital services by themselves will be given support so they are not excluded, for example through intermediaries.
85. The administrative justice and tribunals system includes many processes that are currently paper based that could be delivered online. This could be particularly beneficial for processes that interact with other departments, who are a key user of the system in many jurisdictions. We will explore

which of these processes we could digitally transform to deliver services that are more effective, less costly and more responsive to our users.

### **Next steps**

86. An action plan is included in this document at annex A. This captures the core actions underlying the six headings for our work plan and timescales associated. Under each heading – but in particular, on funding, initial decision making and proportionality – specific proposals will be developed in the coming months. This will be supported, crucially, by collating better data on performance and costs across the administrative justice and tribunals system.

## Annex A: Action plan

	Objective	Actions	Timescale
1.	To strengthen arrangements with other departments and public bodies to oversee the development and delivery of administrative justice and tribunals policy.	<ul style="list-style-type: none"> <li>Strengthen bilateral arrangements with departments whose decisions lead to appeals.</li> <li>Work with the devolved administrations to align processes across borders where necessary.</li> <li>Work with the judiciary, ombudsmen (e.g. the Parliamentary and Health Service Ombudsman) and other bodies in the administrative justice and tribunals system to identify and address performance issues.</li> </ul>	New arrangements in place by April 2013.  Ongoing
2.	To establish, encourage and maintain a user focus that supports open policy making.	<ul style="list-style-type: none"> <li>Establish the Administrative Justice Advisory Group to support a user-focused approach to developing policy and identifying areas for improvement within the system.</li> <li>Hold targeted policy sessions with academics, representative groups and a wide network of interested parties on priority issues.</li> </ul>	Established May 2012 and ongoing.  Ongoing.
3.	To prioritise tribunal transfers into the unified structure on a cost/benefit basis and to maintain oversight of those that remain outside of the system.	<ul style="list-style-type: none"> <li>Oversee the performance of tribunals that remain outside of the unified system ensuring consistency with the three key principles of fairness, efficiency and accessibility.</li> <li>Examine and prioritise the costs/benefits of bringing tribunals still outside of the unified structure into the system and incorporate actions into the MoJ business plan accordingly.</li> </ul>	2013/14  Ongoing
4.	To ensure new appeal rights proposed by Government are fair, efficient and accessible.	<ul style="list-style-type: none"> <li>Create a gateway to review and aid the development of new rights as they arise in Government.</li> </ul>	2013/14
5.	To scope, develop and implement clear, evidence based tribunal funding and fee models to reduce demands on the tribunal system.	<ul style="list-style-type: none"> <li>Scope new funding/fee models, building accurate information on the full cost of appeals and claims – from initial decision to the end of the tribunal process.</li> <li>Develop and test various funding and charging options against this data, and identify where funding needs to be altered.</li> <li>Implement new models with HM Treasury, other Government departments and HMCTS where appropriate.</li> </ul>	2013/14  2014/15  2015/16

	<b>Objective</b>	<b>Actions</b>	<b>Timescale</b>
6.	To establish improved end-to-end performance data to drive better decision making.	<ul style="list-style-type: none"> <li>Establish reliable end-to-end data on volumes of decisions, including those not challenged, and the costs associated with the entire process.</li> <li>Use information to identify potential systemic issues and to inform targeted action.</li> <li>Work with decision-making bodies, HMCTS and judiciary to identify where resource can be invested for improvements to the system.</li> </ul>	<p>2013/14</p> <p>Ongoing</p> <p>Ongoing</p>
7.	To ensure information is made available to enable improvements in the quality of initial decision making.	<ul style="list-style-type: none"> <li>Work with initial decision makers, HMCTS, the judiciary and users to identify potential improvements to feedback mechanisms.</li> <li>Assess existing feedback mechanisms in priority areas to establish best practice.</li> <li>Implement and assess new feedback pilots with a view to further roll-out.</li> </ul>	<p>2013/14</p> <p>2013/14</p> <p>Ongoing</p>
8.	To promote early and proportionate dispute resolution across Government.	<ul style="list-style-type: none"> <li>Draw together existing information on proportionate dispute resolution techniques into a framework.</li> <li>Further develop mapping factors with initial decision makers, HMCTS, the judiciary and users to identify potential for pilots to test new models of introducing proportionate dispute resolution into the system.</li> <li>Implement and assess proportionate dispute resolution pilots and share best practice.</li> </ul>	<p>2013/14</p> <p>2013/14</p> <p>Ongoing</p>
9.	To develop improved information on and insight into administrative justice users to inform work on each strand of the strategy.	<ul style="list-style-type: none"> <li>Consolidate the information currently gathered from sources such as jurisdictional user groups, Lean exercises carried out by HMCTS and complaints processes.</li> <li>Identify gaps in user insight and prioritise research and surveys.</li> </ul>	<p>2013/14</p> <p>2013/14</p>
10.	To ensure our communications to users encourage efficiency, support fairness and enhance accessibility to the system, and explore opportunities for digitising administrative justice processes to deliver the best service for our users.	<ul style="list-style-type: none"> <li>Review the information currently available to users of the administrative justice and tribunals system and implement changes in line with the MoJ digital strategy.</li> <li>Continually improve the information provided to users, in partnership with other departments, to ensure that it properly reflects policy changes and improved user insight.</li> </ul>	<p>2013/14</p> <p>Ongoing</p>

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