



# Administrative Justice & Tribunals Council

ANNUAL REPORT 2011/2012





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This Report is made to the Lord Chancellor,  
the Scottish Ministers and the Welsh Ministers

Presented to Parliament pursuant to Schedule 7,  
paragraph 21 of the Tribunals, Courts and Enforcement Act 2007

Presented to the Scottish Parliament by the Scottish Ministers in accordance  
with Schedule 7, paragraph 21 of the Tribunals, Courts and Enforcement Act 2007

Presented to the National Assembly for Wales by the Welsh Ministers in accordance  
with Schedule 7, paragraph 21 of the Tribunals, Courts and Enforcement Act 2007

The AJTC's Scottish and Welsh Committees publish their own annual reports which  
are laid before the Scottish Parliament and the National Assembly for Wales  
by the Scottish and Welsh Ministers respectively.

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Professor Sir Adrian Webb - *Chairman of the Welsh Committee*  
Jodi Berg OBE (*until November 2012*)  
Professor Alice Brown CBE (*until November 2012*)  
Professor Andrew Coyle CMG  
Sukhvinder Kaur-Stubbs  
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# Chairman's Foreword

It is ironic that, as Parliament is being asked to abolish the AJTC, the administrative justice system which we oversee is facing unprecedented challenges. These come both from the demands placed upon the system and a wide range of recent or imminent changes. This Annual Report records how this has been one of our busiest periods. Not only have we been able to react with an independent, informed and expert voice to diverse proposals from the Ministry of Justice and other government departments. We have also been able to initiate our own reviews of the system and its components and put forward well-received proposals for improving access, fairness and efficiency from the users' perspective. Alongside this, we have exercised our statutory rights to observe tribunals, we have kept fully-informed through dialogue with an extensive range of contacts and we have confronted the distractions thrown up by the prospect of abolition.

In an open letter to the new Justice Minister, Helen Grant MP<sup>1</sup>, which I shared at our 2012 Conference, I asked her to re-consider the case for retaining the AJTC. I pointed out some of the challenges ahead. It is not difficult, for example, to foresee the pressures that will be faced in coming years by tribunals in the Social Entitlement Chamber as a result of welfare reforms, including the introduction of Universal Credit and the new Personal Independence Payment to replace Disability Living Allowance. At the same time, local authorities will be called upon to administer replacements of Council Tax Benefit and the discretionary elements of the Social Fund. It is already clear that local authorities in England and the governments in Scotland and Wales are struggling to develop workable arrangements for their new locally-based schemes, including coherent appeal rights.

More recent proposals seek to limit access to judicial review, to introduce new fee remissions arrangements in immigration appeals, and to remove the right of appeal in family visit visa cases. Meanwhile, a draft Order for the introduction of fees in employment tribunals and the Employment Appeal Tribunal has also been laid in Parliament. The marked reduction in the time allowed for consultation, following the removal of the requirement to provide a three month consultation period in every case, has not made it easy to address the complexities of these issues.

Alongside these upheavals, legal aid changes and advice service cutbacks mean that ever greater numbers of appellants will be appearing before tribunals unrepresented and without even having had advice on the merits of their case. The onus will fall heavily on tribunals themselves to distinguish meritorious from unmeritorious cases and to adopt an even more 'enabling' role in assisting unrepresented appellants to put their case as best they can. This will inevitably protract the time it takes for appeals to be heard and reduce the number of hearings that can be dealt with in a session, thereby increasing delays and costs.

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<sup>1</sup> see Appendix A

Most current changes have – understandably – been put forward by the Ministry of Justice. These examples must raise fundamental questions about whether, as it claims, the MoJ can take in-house the AJTC’s statutory function of overseeing the administrative justice system. Is it possible to be a critical commentator on administrative justice issues at the same time as acting as a key player in its operation? The lack of independence and user-focus is compounded by the cross-border nature of administrative justice (with some elements which are devolved and others covering the UK as a whole) and by the limited resources and experience available within the MoJ.

It is frustrating that, against this background and despite almost universal opposition, the Order to bring about AJTC’s abolition was laid in both Houses of Parliament on 18 December 2012. In the absence of any significant cost savings and the risk of an overall increase in costs, the government has nevertheless indicated that it is seeking parliamentary approval for closure in 2013.

It is heartening to note that the governments in Scotland and Wales have indicated their intention to establish successor arrangements to the AJTC’s Scottish and Welsh Committees. Both governments clearly see the benefits of having an independent body to oversee administrative justice in their respective countries. However, this will not fully compensate for the loss of the AJTC’s GB-wide perspective.

I cannot close without paying tribute to many people. Past and current members of the AJTC and the Council on Tribunals and their Committees have given outstanding public service. No-one will object if I single out my predecessor, the late Lord Newton. Tony’s commitment to improving justice for ordinary people, and his outrage at the proposed closure of the AJTC, were manifest right up until his sad death in 2012. The staff of the AJTC, so ably led by the widely-admired Ray Burningham, have served the Council with distinction and created a real centre of expertise and constructive input. They have soldiered on admirably over the past two and a half years despite the uncertainties and threat of abolition. Their continued commitment to the AJTC and our work has been commendable.

Ultimately what remains important is the continuous improvement of the administrative justice system – so that more decisions affecting millions of citizens are correct and where mistakes can be challenged more easily, cheaply and effectively.

**Richard Thomas CBE**

# Our Role and Purpose

## Our Statutory Role

The key functions of the AJTC as set out in the Tribunals, Courts and Enforcement Act 2007 are:

- 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;
- making proposals for research.

The Act also makes provision for the Scottish and Welsh Committees of the AJTC to carry out functions conferred under any statutory provision. The AJTC has established a protocol to guide the interrelationship between the AJTC and its Scottish and Welsh Committees.

## Our Purpose

Individual decisions by government and other public bodies impact on the daily lives of every citizen. Over half a million disputes reach a tribunal or ombudsman every year.

The AJTC was created to be the independent and authoritative voice to monitor and improve the way public bodies make decisions affecting individuals and the workings of redress mechanisms, including tribunals. We are uniquely placed to consider the administrative justice system as a whole - from the initial decision affecting the citizen to the final outcome of any complaint or appeal.

Our purpose therefore is to help make administrative justice increasingly accessible, fair and efficient by:

- playing a pivotal role in the development of coherent principles and good practice;
- promoting understanding, learning and continuous improvement;
- ensuring that the needs of users are central.

Our work is driven by the needs of users, with a particular focus on maximising access and customer satisfaction and minimising cost, delay and complexity.



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# 1. Introduction and key events and issues of the year

## The abolition of the AJTC

1. The prospect of abolition became a reality when on 18 December 2012 the draft Order to effect the AJTC's abolition was finally laid in both Houses of Parliament by the Parliamentary Under-Secretary of State in the Ministry of Justice. This will be subject to a prescribed parliamentary procedure, leading to abolition taking place around the end of April, almost two and a half years after it was first announced.
2. Throughout the past year we have continued to carry out our statutory duties as fully and effectively as possible, in the face of continued reductions in our staff and membership resources, having been unable to replace staff as they left or members as their appointments came to an end. This report covers the last 16 or so months of our operation up to the end of 2012.

## The Public Bodies Act 2011

3. The Public Bodies Act 2011 received Royal Assent on 14 December 2011 following a turbulent passage in its final stages in the House of Lords. A last minute effort by peers, led by the AJTC's former Chairman, the late Lord Newton of Braintree, to introduce an amendment to merge the AJTC with the Civil Justice Council, was narrowly defeated by only three votes.
4. The Act provides the procedure for making an Order to abolish any of the bodies in Schedule 1, involving the laying of a draft Order before each House of Parliament for consideration. Ministers are required to have regard to any representations, any resolution of either House of Parliament and any recommendations of a committee of either House of Parliament with regard to the draft Order. It is anticipated that the Order for our abolition will receive close scrutiny by the Secondary Legislation Scrutiny Committee of the House of Lords and the Justice Committee of the House of Commons.

## Consultation – Public Bodies Bill: reforming the public bodies of the Ministry of Justice

5. In last year's report we discussed our response to the consultation issued by the Ministry of Justice (MoJ) on reforming the public bodies under its sponsorship, which among other things invited views on the proposal to abolish the AJTC. The Government published its response to the consultation on 15 December 2011, in which it confirmed its intention to press ahead with our abolition. This was particularly disappointing in the face of widespread support for our retention by respondents to the consultation – 37 out of a total of 41 respondents strongly supported our retention, with only 4 respondents not being opposed to our abolition.

6. It was pleasing to note that the Government's response fully and properly reflected the level of support for our retention, which made its conclusion - to continue to press ahead with our abolition - all the more surprising to us. The Government's main arguments are that the AJTC's functions are either no longer required or - in the case of our policy functions - are more properly performed by the Government itself, a view which we and a number of others have challenged.

#### **Public Administration Select Committee Inquiry 'Future Oversight of Administrative Justice: the proposed abolition of the AJTC'**

7. On 26 October 2011 the Public Administration Select Committee (PASC) announced an inquiry into the future oversight of the administrative justice system and the proposed abolition of the AJTC. We warmly welcomed the announcement of the inquiry, to which we submitted evidence, including our latest report '*Securing Fairness and Redress: Administrative Justice at Risk?*' (discussed more fully in Chapter 4). Our Chairman and Chief Executive gave evidence to the Committee at its oral evidence session on 22 November 2011. The Committee also took evidence from the then MoJ Parliamentary Under-Secretary of State, Jonathan Djanogly MP, and Anna Deignan, MoJ's then Deputy Director of Access to Justice.
8. We welcomed the Committee's final report, published on 8 March 2012, which highlighted the fundamental difference of view between the Government and others over whether there is a continuing need for the functions that the AJTC performs. The report also raised doubts about the level of cost savings that the Government estimated could be secured by our abolition. The Committee further found that the Government's rationale for winding up the AJTC was questionable in some respects.
9. We responded formally to the Committee's report, welcoming the attention that the resulting debate had brought to key issues in administrative justice more generally and to the key characteristics of the AJTC's independent scrutiny role. We also welcomed the emphasis that the report had given to the administrative justice system as a whole, including ombudsmen, tribunals outside HMCTS and alternative dispute resolution mechanisms across England, Scotland and Wales.
10. In the meantime, we have continued to engage proactively with MoJ officials with a view to ensuring a seamless transfer of those of our functions that they may wish to retain and to assist them in the development of a robust administrative justice strategy for the future. The MoJ has recently published its strategy document '*Administrative Justice and Tribunals: A Strategic Work Programme 2012-16*'.

## Outturn from our 2011-12 Action Plan

11. In the light of the ongoing uncertainty about the likely date of our abolition we decided to publish an Action Plan setting out the tasks we planned to undertake in our remaining time in operation. In addition to outstanding work carried forward from our 2010-11 plan we identified one new project, which led to the publication of our *'Administrative Justice at Risk?'* report, which is discussed in more detail in Chapters 2 and 4.
12. We also anticipated the need to adopt a more reactive role in the light of the Coalition Government's ambitious legislative programme, including legislation on welfare reform, education, employment and asylum and immigration. In addition, we anticipated a significant proposal in respect of fees in employment tribunals, to which we subsequently submitted a lengthy response. We were also keen to monitor closely developments in the government's reform of legal aid. The plan further reflected on how we might manage a smooth contraction and closure of our operations and the transfer of our outputs and assets to successor organisation(s).
13. Full details of the work we completed in 2011-12 are described more fully in Chapter 2.

## Action Plan 2012-13

14. In anticipation of surviving until at least the end of the 2012 calendar year we published an Action Plan for 2012-13, in which we identified a number of relatively small pieces of work which we planned to deliver if the legislative timetable for our closure provided the time to do so. The majority of this work is aimed at following up on projects that we have completed in recent years, including *'Right First Time'*, and *'Principles for Administrative Justice'*. We have also undertaken a project with school appeals clerks aimed at filling perceived gaps in the new statutory Admissions Codes and statutory guidance on School Exclusions. Full details of these projects are included in Chapter 2.

## AJTC Conference 2011

15. It looked doubtful initially that we would be able to hold our usual Annual Conference in 2011 because of the impact of austerity cutbacks to our budget. However, by moving the venue to the BIS Conference centre at 1 Victoria Street, London and reducing the numbers of invited delegates we were able to proceed with the event on 17 November 2011. Despite cutting back on delegate numbers there was an excellent turnout from across a wide range of bodies within the administrative justice world, many of whom throughout the day expressed real concern at the AJTC's prospective abolition.
16. As previously mentioned, the focus of the Conference was *'Administrative Justice at Risk?'*. The morning session opened with a keynote speech by the *Rt. Hon. Baroness Scotland of Asthal* QC, a former Attorney General and Minister in the former Lord Chancellor's Department. Baroness Scotland paid tribute to the

work of the AJTC and former Council on Tribunals, and questioned the wisdom of abolishing a body with such a long and distinguished history, particularly at a time when its role was all the more crucial in protecting the best interests of users of the system from the austerity measures being introduced across the board by the Government. Our Chairman, *Richard Thomas*, followed on the theme of *'Administrative Justice at the Crossroads'*, highlighting the need to embed a 'right first time' culture; urging a balanced approach to tribunal fees; highlighting the impact of legal aid cuts and promoting greater recourse to alternative dispute resolution. *Steve Hynes*, Director of Legal Action Group, spoke about the inherent risks to access to justice from recent government initiatives, including legal aid cutbacks and the introduction of fees in tribunals. *Catherine Lee*, Director of Access to Justice in the Ministry of Justice, provided an overview of the work that the Department was taking forward in respect of administrative justice, and particularly to take over the some of the role currently undertaken by the AJTC. *Ann Abraham*, the Parliamentary and Health Service Ombudsman (PHSO), provided a perspective of administrative justice by reference to the types of cases her office had dealt with in her time as PHSO.

17. The afternoon session began with a joint presentation on *'Getting it Right First Time'*. *Alice Brown*, a member of the AJTC, provided an overview of the AJTC's own *'Right First Time'* report, highlighting some of its key recommendations. *Professor Malcolm Harrington*, Emeritus Professor at Birmingham University and former Chairman of the Industrial Injuries Advisory Council, spoke about his review of the work capability assessment (WCA) for Employment and Support Allowance, which he had been asked to undertake by the Secretary of State for Work and Pensions. He emphasised the need for more effective communications with claimants from the outset and the need for greater empathy on the part of decision makers. Finally, the *Rt. Hon. Lord Carnwath of Notting Hill*, the then Senior President of Tribunals, provided a judicial perspective of administrative justice, highlighting the significant changes that had taken place in tribunals over the previous 5 years. We were especially pleased that the then Master of the Rolls, the *Rt. Hon. Lord Neuberger of Abbotsbury*, was able to join the event and take part in the lively panel discussion which followed.

## AJTC Conference 2012

18. The ongoing delay in effecting our abolition meant that we were also able to hold our regular Annual Conference in 2012, which was again held at the BIS Conference Centre at 1 Victoria Street, London. With around 130 delegates from across the administrative justice community, it was pleasing to have such a good turnout for what will have been our last ever event of this kind. The keynote speaker was *Bernard Jenkin MP*, Chair of the Public Administration Select Committee, who in his address paid tribute to the late Lord Newton of Braintree, the AJTC's first Chairman. Our Chairman's speech was by way of an open letter to the MoJ Minister, setting out the current state of play in administrative justice and making the case for the AJTC's role to be retained. *Angela van der Lem*, Deputy Director of Administrative Justice, Court Fees, Coroners and Inquiries in the MoJ, gave an overview of the work that was

being undertaken within the Department on developing a strategic work programme for administrative justice. *Professor Dame Hazel Genn* gave a presentation of her research study on tribunals and users, highlighting the disadvantages users currently face and how these are likely to be exacerbated, particularly by forthcoming changes to legal aid. The Chairs of the AJTC's Scottish and Welsh Committees, *Richard Henderson* and *Professor Sir Adrian Webb* provided updates on the respective positions on the changing constitutional landscapes in Scotland and Wales. The afternoon sessions comprised presentations by *Judge John Aitken*, Deputy Chamber President of the Health, Education and Social Care Chamber, who spoke about how 'LEAN' had been deployed to introduce efficiencies in tribunal processes; *Richard Gutch*, Secretary to the Low Commission, gave an overview of the Commission's work on the future of legal advice and support; finally, the *Rt. Hon. Lord Justice Sullivan* provided his perspective on administrative justice as the incoming Senior President of Tribunals.

## Scotland

19. Our Scottish Committee has continued to pursue its ambitious programme of work, including liaising closely with officials in Scottish Government on the tribunal reform programme that is being taken forward in Scotland. The Committee has continued to provide expert advice and evidence on a range of matters, including the preferred groupings of devolved tribunals in Scotland into a Chamber structure (in anticipation of the establishment of a Scottish Tribunals Service).
20. The Committee also undertook a consultation exercise in connection with a research project sponsored by the Nuffield Foundation investigating the issue of administrative decisions which do not attract a right of appeal, specifically in respect of decisions on community care, higher education, housing, legal aid and planning. At the time, with the AJTC's abolition anticipated in spring 2012, the consultation was specifically targeted to key interested parties, including users and those affected in the areas covered by the report. The consultation generated a good response, which materially informed the outcome of the project. The Committee's report<sup>2</sup> was submitted to Scottish Ministers in August 2012 and published electronically on the AJTC's website.
21. Scottish Ministers have indicated that they wish to continue the Committee's functions post-abolition and have invited the Committee to give advice on the establishment of a non-statutory body to take on that task.

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<sup>2</sup> 'Right to Appeal - A review of decisions made by Scottish Public Bodies where there is no right of appeal or where the appeal procedure is inaccessible or inappropriate.'

## Wales

22. The Welsh Committee has also continued to liaise closely with officials in Welsh Government (WG) in support of its own programme of tribunal reform in Wales. One of the key issues being pursued by WG in the past year has been the question of a separate legal jurisdiction for Wales, on which it consulted widely. The Committee responded to the consultation pointing out the impact of the proposals for tribunals in Wales and highlighting the benefits which would accrue from the full implementation of the recommendations made in the Committee's 2010 report '*Review of Tribunals Operating in Wales*'.
23. The Committee and members of our secretariat are also working closely with Welsh Government officials to develop an administrative justice strategy for Wales.

## Abolition and beyond

24. As explained above the Ministry of Justice laid the draft Order for the AJTC's abolition on 18 December 2012. Parliament has subsequently invoked the 60 day scrutiny period as permitted by the Public Bodies Act 2011. The Justice Select Committee in the House of Commons and the Scrutiny of Statutory Instruments Committee in the House of Lords have both called on MoJ to provide further evidence and/or information.
25. At the time of going to press that information was still awaited. If the parliamentary process proceeds as planned we anticipate abolition will take effect in late Spring. Further updates on the abolition process will be available on the parliamentary website. Significant developments will also be highlighted on the AJTC's own website.
26. The Scottish and Welsh Governments are devising their own systems to monitor administrative justice in their respective territories after the AJTC is abolished.
27. Pending abolition we have embarked on an exercise to 'digitise' the archive of Council on Tribunals' publications prior to the establishment of our website in 1999/2000. All annual and special reports from 1958/59 together with a few other miscellaneous publications can be read and downloaded from the archive at: <http://ajtc.justice.gov.uk/publications/179.htm>
28. Post-abolition the website will be 'imaged' and uploaded to the National Archive where copies can be accessed from the index at: <http://www.nationalarchives.gov.uk/webarchive/atoz.htm>
29. The AJTC's paper archive, together with that of the Council on Tribunals, will be retained by the National Archive. Any inquiries about the AJTC or its functions should henceforth be directed to the Justice Policy Group at the Ministry of Justice.



## 2. Carrying out projects to identify improvements

### Priority projects and progress reports

1. Our Action Plan for 2011-12 committed us to one new project which led to the production of our '*Administrative Justice at Risk?*' report, discussed below. We also continued work on outstanding projects from 2010-11, including work to finalise our project on Proportionate Dispute Resolution. We have also run a number of seminars during the year, which are also discussed below.

### Securing Fairness and Redress: Administrative Justice at Risk?

2. We commenced this project with the intention of producing a legacy report, setting out an outline of the challenges for administrative justice as the AJTC departed the scene. In the event, the lengthening timescale for our abolition meant that the scope, purpose and output of the project changed with the publication in October 2011 of our report '*Securing Fairness and Redress: Administrative Justice at Risk?*'. As such, the report set the theme for our November conference discussed in Chapter 1.
3. The report focussed on a set of key issues for administrative justice, and in particular, set out five areas where reform is needed:
  - The need for more accessible laws and regulations which have a degree of stability;
  - a 'Right First Time' culture in government decision-making;
  - proper access to help, advice and representation for citizens pursuing redress against government decisions;
  - further reforms to ensure coherent access to administrative justice across the whole of the UK;
  - new and proportionate models for resolving disputes faster and in more user-friendly ways.
4. The full report can be found on our website and a fuller discussion of this work is at Chapter 4.

### Proportionate Dispute Resolution

5. Our report on Proportionate Dispute Resolution, which had been carried forward from our 2010-11 Action Plan, was published in June 2012 as '*Putting it Right - A Strategic Approach to Resolving Administrative Disputes*'.
6. The report emphasised the need for better links right across the various stages of the administrative justice cycle and recommended ways to:
  - Prevent disputes;

- Reduce the escalation of disputes;
  - Resolve disputes; and
  - Learn from disputes.
7. The report also highlighted a range of dispute resolution techniques and the scope for innovative and tailor made ways of meeting user needs. It further highlighted the potential use of 'triage' in managing appeals and of telephone and other techniques for identifying the key issues in a dispute at the earliest possible stage.
  8. The report is available on our website.

## Ombudsman Seminar

9. We held a seminar for key stakeholders from across the Ombudsman world on 21 June 2012 at The Hatton Conference centre in Central London. The event had three key aims:
  - To begin an informed debate about the future of Public Services Ombudsmen across the UK;
  - To identify key issues affecting Ombudsmen
  - To begin to scope a wider vision for Ombudsmen.
10. The seminar was attended by around 50 delegates representing different ombudsmen systems, user groups and parts of government. The Parliamentary and Health Service Ombudsman, *Dame Julie Mellor*, spoke about her early experiences of and thoughts on the current challenges, opportunities and underlying principles concerning ombudsmen schemes. *Peter Tyndall*, the Public Services Ombudsman for Wales and the Chair of the Ombudsman Association, set out the wider context, particularly the different schemes operating in the various component parts of the UK and the scope of issues covered by them. Finally, *Dr Richard Kirkham*, lecturer in law at the University of Sheffield, set out some ideas on how to increase the impact of ombudsmen.
11. Delegates worked in groups to identify the strengths and weaknesses of Ombudsman systems and some of the key issues for public service ombudsmen. These included:
  - The need to develop a systemic role;
  - The need to improve coherence and to increase collaboration amongst ombudsmen;
  - The implications of the Government's 'Open Public Services' White Paper;
  - Funding;
  - Accountability and the demonstration of effectiveness.
12. A full report of the event is on our website.

## Joint Workshop with the Whitehall and Industry Group – Exploring Best Practice in complaint-handling

13. We held a joint workshop event with the Whitehall and Industry Group at the MWB Business Exchange in London on 27 April 2012. The aim of the workshop was to compare best practice in complaint handling in both the public and private sectors.
14. The keynote speaker was the then newly appointed Parliamentary and Health Service Ombudsman, *Dame Julie Mellor*. She outlined the scope of her role and its capacity to make an impact in the changing public service environment. Drawing on recent work undertaken by her office she went on to define the different aspects of her role in terms of fire-fighting, fire-watching and fire prevention.
15. Representatives of the Financial Services Authority outlined their approach to the complaints they receive. Representatives from the Department of Work and Pensions presented their latest work on complaint handling, and in particular new ways of working that simplified the process, empowered staff and dramatically reduced the number of steps in the process.
16. The presentations were followed by a discussion and report-back which, among other things, identified the following key points:
  - Complaint *resolution* is key rather than complaint handling;
  - Good triage is vital, as is communication and a human touch;
  - Modern technology is a great facilitator, bringing records and documents together;
  - Complaints should be encouraged, especially as a means of obtaining feedback; and
  - ‘Sorry’ (still) seems to be the hardest word.

## Resolving Disputes without Hearings

17. We ran a seminar on resolving disputes without hearings at our London office on 13 February 2012. The intention was to explore how a sample of ‘non hearing’ dispute resolution schemes matched up against the administrative justice criteria of fairness, accessibility and efficiency.
18. Around 25 participants attended from a wide variety of bodies, including four speakers from organisations which routinely handle disputes without the necessity of a hearing. They were *Professor Martin Partington* CBE, QC (the Dispute Service for Tenancy Deposits); *Karamjit Singh* CBE (Chief Social Fund Commissioner); *Caroline Sheppard* (Chief Adjudicator, Traffic Penalty Tribunal); and *Richard West* (Financial Ombudsman Service). Each explained how their respective schemes operated and explored case volumes, costs and strengths/weaknesses of these approaches.
19. A general group discussion followed, which drew out a number of conclusions. There was general agreement that schemes which operate without hearings could in appropriate cases deliver justice in line with the expectations, needs and wishes of users.

20. Further specific points were raised around a number of issues, including flexibility and triage, the opportunity to 'make one's case' and the use of technology.
21. A full report of the event is on our website.

## Best Practice Guidance on School Admission and Exclusion Appeals

22. Working with key representatives from the National Association of School Appeals Clerks (NASAC - formerly the EASI group) we undertook a short project aimed at providing some best practice guidance for Independent Appeal Panels and clerks dealing with school admission and exclusion appeals. The Terms of Reference of the project were *"To review the Department for Education's new 'slimmed down' Admission Appeals Code and Guidance on Exclusions in order to identify any serious gaps in the material and consider how best to fill those gaps"*.
23. The resulting guidance documents, on which we consulted the relevant policy officials in the Department for Education (DfE), were launched at the NASAC annual meeting in October 2012, attended by representatives of the AJTC and the DfE. The documents have been published on our website and highlighted in the final edition of our Adjust e-zine. Moreover, they have been distributed widely among the regional membership of the NASAC groups, with invitations to make them more widely available to the appointed membership of their admission and exclusion panels.

## Research work

24. We are continuing to develop a comprehensive research strategy as part of our legacy work now that abolition has become a more apparent reality. We held seminars in Edinburgh and London with key stakeholders from across the academic and research world with a view to identifying and influencing key areas for future research in administrative justice. This has enabled us to develop a robust and wide-ranging research agenda for the future, which will be published before the AJTC departs the scene. We have also been concerned to seek views on who should take responsibility for overseeing the research needs of the administrative justice landscape, which we fear will be a low priority for the MoJ in comparison to criminal, civil and family justice. We encouraged those present at the seminars to consider the establishment of a virtual research network in order to ensure that administrative justice research remains properly coordinated. We recognise that such a network will require some initial funding and ongoing support and have suggested that the MoJ should take a lead role in advancing this proposal.

## Patients' experiences of the First-tier Tribunal (Mental Health)

25. We have been pleased to note positive developments during the year arising from the recommendations in our 2011 report on patients' experiences of the First-tier Tribunal (Mental Health)<sup>3</sup>, which was produced jointly with the Care Quality Commission. One of the recommendations invited the Tribunals Service to produce an information leaflet for patients explaining the purpose of the pre-hearing medical examination and its role in the tribunal process. A new leaflet, *T129 – Your interview with the tribunal doctor*, has now been introduced and is sent to patients with the letter acknowledging receipt of their application, and before they are seen by the medical member of the tribunal.
26. Another recommendation invited the Legal Services Commission (LSC) to accelerate its work to require all legal representatives appearing before the tribunal under an LSC contract to be accredited as members of the Law Society's Mental Health Tribunal Panel. Towards the end of the year the LSC published on its website a helpful statement to the effect that for all future publicly funded mental health contracts the LSC will require all staff carrying out legal representation before the Mental Health Tribunal to be members of the Law Society's Mental Health Tribunals Accreditation Scheme. It is anticipated that this requirement will be introduced for new contracts following the next national tender exercise, at the earliest from April 2014.
27. Our Chairman and one of our members, Penny Letts, also had a meeting with Lucy Scott-Moncrieff, the then Vice-President of the Law Society (now the President), other officials from the Law Society and two salaried judges of the First-tier Tribunal (Mental Health) to discuss standards of representation at mental health tribunal hearings. This was both in connection with an issue raised in our report about the quality checking of legal representatives by tribunal members and also as a result of the same concern having been raised at meetings of the Mental Health Stakeholder Group. The aim of the meeting was to discuss what more could be done to put in place an effective system to deal with complaints about poor practice and to improve standards of representation at tribunal hearings, including by asking how tribunals themselves might refer poor or inadequate standards or inappropriate behaviour by a legal representative to the appropriate professional regulator. It is pleasing to note that following that meeting work is being taken forward on this matter by Law Society officials, who in the first instance are setting up a meeting of key stakeholders to discuss what arrangements might be put in place for dealing with complaints about the quality of legal representation.
28. In the interim, a jointly-badged letter from Robert Robinson, Chief Assessor of the Law Society's Mental Health Accreditation Scheme, and John Sirodcar, Head of Contract Management at the Legal Services Commission (LSC), was issued to all supervisors under

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<sup>3</sup> Patients' experiences of the First-tier Tribunal (Mental Health) – Report of a joint pilot project of the Administrative Justice and Tribunals Council and the Care Quality Commission (March 2011) Available at [http://ajtc/justice.gov.uk/docs/AJTC\\_CQC\\_First\\_tier\\_Tribunal\\_report\\_FINAL.PDF](http://ajtc/justice.gov.uk/docs/AJTC_CQC_First_tier_Tribunal_report_FINAL.PDF)

mental health contracts awarded by the Legal Services Commission. The letter highlighted complaints from members of the judiciary about poor quality representation at tribunal hearings and reminded supervisors of their responsibilities under the contract with regard to the allocation of cases to competent staff and the effective supervision and quality control of their work. This is a further helpful development, which will hopefully be followed up in due course with new and better arrangements for dealing with complaints about standards of representation in mental health.

## Right First Time

29. Our 'Right First Time' report published in June 2011 included the recommendation "*Tribunals should separately highlight situations in their formal decisions where cases exhibit serious systemic problems which the Tribunal considers that the original decision-maker should address*". Following a visit by our Chairman to observe a hearing of the Immigration and Asylum Chamber of the Upper Tribunal the President, Mr Justice Blake, sent the Chairman copies of two tribunal decisions which had adopted this approach in highlighting serious systemic failures by the UK Border Agency. It is pleasing to see practical examples of our recommendations being put into practice.

## 3. Working with others to effect change

### Liaison throughout the year with Her Majesty's Courts and Tribunals Service (HMCTS)

#### Tribunal Procedure Committee

1. One of our members, Bronwyn McKenna, continues to represent the AJTC at meetings of the Tribunals Procedure Committee (TPC), which is responsible for making the rules governing the practice and procedure in the First-tier and Upper Tribunals. The TPC meets every four or five weeks, which is a considerable time commitment over and above her attendance at our own monthly meetings, other ad-hoc meetings which take place from time to time, and her attendance at tribunal hearings during the year.
2. In previous Annual Reports we have also mentioned Bronwyn's attendance at the TPC sub-group which was set up to consider how best to overcome the difficulties preventing the adoption of a universal time limit within the Social Entitlement Chamber Rules for the agencies of the Department of Work and Pensions (DWP) to deal with social security appeals. We have been critical of the time it has taken to make progress with this matter but were pleased to note a commitment by the DWP to introduce such a time limit at an early opportunity. This is discussed further in the section detailing our responses to consultations.

#### Meeting with Kevin Sadler, Director - Civil, Family and Tribunals

3. Kevin Sadler, Director of Civil, Family and Tribunals in HMCTS, attended our meeting in April 2012 to provide an update on HMCTS' first year of operation. He reported positively on caseload statistics for tribunals and their achievements against key performance indicators across the board, with receipts generally reducing across the range of jurisdictions whilst disposals were increasing. He advised that this trend is likely to reverse in the coming year in respect of social security appeals following the introduction of Universal Credit and Personal Independence Payment, new benefits introduced under the Welfare Reform Act 2012. HMCTS was reported to be working closely with the Department for Work and Pensions to predict workload forecasts. In regard to social security appeals we raised our concerns about hearings taking place in court buildings, particularly those associated with criminal proceedings, and the potential negative impact on tribunal users, some of whom may be reticent to attend a hearing in such an environment. The HMCTS is working to rationalise its estate with a view to addressing users' concerns about hearing venues. Similarly, it is working with DWP to improve the reconsideration process and the mechanisms for feeding the findings from tribunals back to front-line decision makers, both of which are welcome developments, and which we have previously urged.
4. We also raised with him the issue of fees in tribunals. He reported that fees had been introduced successfully in respect of immigration and asylum appeals and were expected to be introduced into employment tribunals in 2013. The Government's response to

the earlier consultation on fees in employment tribunals and the employment appeal tribunal is expected to be published in the summer. We look forward to seeing the outcome of the consultation, to which we and many others responded critically, and particularly as to the extent to which respondents' views have been taken on board.

## Liaison with Others

### Mental Health Stakeholder Group

5. The AJTC continued to sponsor, host and chair the meetings of the Mental Health Tribunal advisory stakeholder group, which met twice in the period covered by this report. In the light of our impending abolition, and following a consultation with members of the group and other interested parties on the future arrangements for the group's meetings, it was concluded that the sponsorship of the group should revert to HMCTS. The last meeting of the group under our sponsorship and chaired by Richard Thomas took place in May 2012.
6. Since its first meeting in 2007 the stakeholder group has played a positive role in enabling the judiciary and administrators to maintain a productive dialogue with the tribunal's stakeholders. The group's meetings, held three times a year, have been consistently well attended and stakeholder members around the table have felt able to raise issues and share views in a collegiate and non-adversarial atmosphere. During the five years that the group has been in operation there has been a significant improvement in the tribunal's administration, primarily due to its transfer in 2006 into the unified system, where it has been much better resourced and managed than it had previously been under the sponsorship of the Department of Health. There have been year-on-year improvements in the tribunal's operations, both in terms of dealing with outstanding backlogs and reducing waiting times for hearings. The tribunal's performance measured against its key performance indicators has also continued to improve. The tribunal has materially benefited from having more effective judicial leadership through the appointment of a Deputy Chamber President, Judge Mark Hinchliffe, supported by a cadre of full-time salaried judges.
7. It is hoped that the positive momentum built up by the stakeholder group will be maintained under the new sponsorship arrangements within HMCTS. In our response to a consultation by HMCTS on the future arrangements for the stakeholder group we suggested that there was no reason to alter its constitution or membership, provided that it was kept under continuous review.
8. When the arrangements for the new stakeholder group were subsequently announced our Chairman wrote to Judge Hinchliffe pointing out the apparent omission of any representation on the group from the Care Quality Commission (CQC), which appeared to be a glaring omission in the light of the CQC's wide statutory remit to oversee the operation of the Mental Health Act.



## War Pensions and Armed Forces Compensation Appeals Advisory Steering Group

9. The war pensions and armed forces compensation appeals advisory steering group, which is also chaired by Richard Thomas, met only once in the period covered by this report. The group was originally set up in 2009 with the overriding aim of pursuing a co-operative, inclusive and consistent approach to war pensions and armed forces compensation appeals across the United Kingdom. Again, in the light of our prospective abolition it is anticipated that new arrangements for chairing the group's meetings will need to be put in place for the future.

## Senior President's Report

10. In February 2012 the Rt. Hon. Lord Carnwath of Notting Hill, the then Senior President of Tribunals, published his final report under Section 43(1) of the Tribunals, Courts and Enforcement Act 2007 Act before taking up his appointment as a Justice of the Supreme Court. In the report he reflected on his time as Senior President from his initial appointment in 2004.
11. He expressed pride at the completion of the radical transformation of the tribunals structure without controversy or disruption to services, but with important gains in efficiency, productivity and access for users, and substantial financial savings. He also highlighted areas within the 2004 White Paper "*Transforming Public Services: Complaints, Redress and Tribunals*" where more work is still needed, including raising the standards of initial decision making and decision letters; more effective use of proportionate dispute resolution; enhanced advice for tribunal users, and continued research into unmet legal needs in administrative justice and employment disputes.
12. He also paid tribute to the work of the AJTC (and former Council on Tribunals) for the role it has played, both as a critical friend and as a 'doughty champion of administrative justice and tribunals'. He expressed misgivings about the ability to replicate the AJTC's joined-up approach by whatever means the Government chooses to put in its place.
13. We have been grateful for Lord Carnwath's unstinting support for our work and our retention and in turn pay tribute to the vision and commitment he brought to his role as Senior President of Tribunals.
14. The AJTC was pleased to note the appointment in June 2012 of the Right Hon. Lord Justice Sullivan as the new Senior President of Tribunals. The AJTC and former Council on Tribunals enjoyed a close working relationship with Lord Justice Sullivan during his time as Chairman of the Tribunals Committee of the Judicial Studies Board and we look forward to working closely with him in his new role in the time we have left before abolition.

## Judicial College

15. The Judicial College was launched on 1 April 2011, bringing together the training of all judicial office holders in courts and tribunals in England and Wales (and some tribunal members in Scotland) into a single centralised institution for professional learning and development. The former Judicial Studies Board's

Tribunals Committee, on which the AJTC was represented by Penny Letts, met for the last time in July 2011 and has now been replaced by a new Judicial College Tribunals Committee, chaired by Judge Nicholas Warren with a membership reflecting key tribunal jurisdictions. Professor Jeremy Cooper has been appointed Director of Training for the tribunals judiciary at the Judicial College.

16. During autumn 2011, the Judicial College Board consulted on its strategy for 2011-2014, setting out the College's vision, overriding objective, governing principles, plan of work and timeframe for initial work. The strategy was published in December 2011.
17. In February 2012, the Judicial College held '*The Focus on the User Seminar*' to explore the procedures, rules, techniques and behaviours that should ensure that the focus of a tribunal is firmly on the user, recognising that such a focus lies at the heart of a tribunals' jurisprudence, which is distinct from that of a court's. The participants included experienced tribunal judges and members from a variety of different jurisdictions as well as members of the AJTC. Both the presentations and discussions reflected on research findings on tribunal users' experiences, including the AJTC's visit reports and projects focussing on them and will be used to formulate a structured plan to underpin future training programmes for tribunal judges and members.
18. Penny Letts has also continued her role as a member of the editorial board for the '*Tribunals*' journal, published three times a year by the Judicial College. The journal has featured regular articles by our Chairman, Richard Thomas, and other AJTC members on aspects of the AJTC's work on issues across the wider administrative justice landscape.
19. Professor Jeremy Cooper wrote to our Chairman to advise him of the Judicial College's future policy with regard to the provision of training support for bodies outside HMCTS (in circumstances where the College has no formal responsibility for such provision). He advised that in the light of the year-on-year reductions in the College's budget and the College's refocusing of its strategic priorities it would no longer be in a position to provide bespoke training or assistance to individuals or organisations in the United Kingdom outside the College's delegated statutory training responsibilities for HMCTS office holders. He also advised that whilst it might still be possible to offer places on training courses to non-HMCTS tribunal members where space is available this would be on a full-cost basis and subject to prioritisation. In his response our Chairman acknowledged the difficulties which arose because of austerity cuts but expressed considerable dismay at this development, particular since non-HMCTS tribunals were more likely to need a greater degree of training support from the College than those within the unified system. The ramifications of this policy change for non-HMCTS tribunals, such as the Mental Health Review Tribunal for Wales, the Special Educational Needs Tribunal for Wales and school admission and exclusion panels, might therefore be considerable. He urged that his concerns should be relayed to the College Board so that it might reflect on what concessions it might be able to make, and this before the change was communicated to the wider tribunal community. Professor Cooper's subsequent

response on behalf of the College Board re-stated the College's commitment to offer places to non-HMCTS individuals where there are free spaces on its planned programme of courses. He also stressed that the existing arrangement whereby members of the MHRT Wales attend training courses run for members of the equivalent English tribunals would continue. Access to the new Learning Management System being developed by the College, including on-line training material, may also be available in the future to non-HMCTS tribunals. In addition, the Editorial Board of the *'Tribunals'* journal will continue actively to commission articles which may assist tribunals outside the HMCTS.

### Ministry of Justice

20. During the year our Chairman and Chief Executive have had a number of meetings with key policy officials in the Justice Policy Group, including Catherine Lee, the Director of Justice Policy Group, and her successive deputy directors, Anna Deignan and Angela van der Lem. We have welcomed the opportunity to engage in a meaningful dialogue concerning the prospective transfer of our functions to the MoJ following our abolition and to assist them in developing their future strategy for administrative justice.
21. Our senior policy staff and members have also had meetings with MoJ policy officials throughout the year as part of a joint effort to build up effective communication links and to exchange information, and in particular concerning tribunals outside the unified system. MoJ will need to take a closer interest in these tribunals as part of its future oversight role.
22. One of our members, Jodi Berg, was invited to join the advisory group on administrative justice, which the MoJ has established. This group will seek to gauge how well administrative justice is working for users; to identify areas of concern; and to provide early informal testing of policy initiatives from the user's perspective. It is intended that it should provide a direct link between MoJ policy and the organisations that work with users of the system. The group includes members from across a range of user-focussed bodies including: Citizens Advice, AdviceUK, Free Representation Unit, Parent Partnership Network, Immigration Law Practitioners' Association, Care Quality Commission, Civil Mediation Council, Mind and Coram Children's Legal Centre. We have expressed concern that it does not include representatives from Scotland and Wales and so will not be qualified to address cross-border issues. These are becoming increasingly important as administrative justice is high on the political agendas in both of these countries. It is also not clear whether, or to what extent, the group will be able to set its own agenda for the future. Neither is it clear whether its work will be directed wholly by MoJ policy officials.

### Ombudsman Association

23. In May 2012 our Chairman and two of our members, Brian Thompson and Mary Seneviratne, attended the Ombudsman Association's Annual Meeting (formerly the British and Irish Ombudsman Association), which provided another welcome opportunity to network with the wider ombudsman community.

Our Chairman was one of the key speakers at the event, delivering a speech entitled “*Independent scrutiny of accessible, fair and efficient justice for citizens*”. He also took the opportunity to provide an update on the position regarding our abolition and on the work we were continuing to take forward, including plans to hold an Ombudsman Seminar in June 2012 (discussed in Chapter 2), to which a number of the Association’s members had been invited.

## Responses to consultations

### Charging fees in Employment Tribunals and the Employment Appeal Tribunal

24. As mentioned in last year’s report, the prospect of fees being introduced for bringing a claim or appeal to employment tribunals (ET) and the Employment Appeal Tribunal (EAT) was raised in an earlier consultation ‘*Resolving Workplace Disputes*’ issued jointly by the Department for Business, Innovation and Skills and the Ministry of Justice (MoJ).
25. The MoJ subsequently consulted on its proposals for fees, putting forward two main options – Option 1, proposing two fee charging points, first on issue of a claim and then afterwards where claims proceed to a hearing; and Option 2, involving only one main fee charging point at the point of issue of the claim, but with the level of fee payable depending on the type of claim and its monetary value. The consultation paper stated that the purpose of introducing fees was in order to transfer part of the cost burden from taxpayers to users of ETs and the EAT.
26. The AJTC had three main concerns about the proposals. First, we considered that the proposals failed to meet the MoJ’s proposed criteria for success – namely, the development of a simple, understandable and cost effective structure which maintained access to justice for those of limited means and contributed improved effectiveness and efficiency of the system by encouraging the early resolution of disputes. Second, we suggested that it would be essential for the final version of the proposals to be much better dovetailed with other ET developments – including the proposed rapid resolution scheme for small ET claims (which in our view should attract no fee); and the development of a more widespread system of pre-claim conciliation as part of the Government’s proposals for dispute resolution in the workplace. Third, we suggested that any dovetailing aimed at meeting these criteria needed to have the simultaneous goals of maximising access to justice for employers and employees; of securing early but genuinely voluntary settlements; and consequently reducing the costs of operating ETs (thereby limiting the cost pressure for the uncomfortably high fees that had been proposed).
27. The Government’s response was largely disappointing, proposing to take forward Option 1. However, it was pleasing to note that the response outlined that fees of a lower level to those originally suggested were to be imposed.

## The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2012

28. The Department for Business, Innovation and Skills consulted on a small set of amendment regulations aimed at giving effect to some of the changes proposed in the earlier consultation '*Resolving Workplace Disputes*', namely to:
- enable witness statements to be taken as read;
  - provide a power for tribunals to order a party to pay the expenses incurred by a witness;
  - increase the maximum amount which a tribunal can order under a deposit, costs, expenses or preparation order;
  - provide that rule 61(8) (on sending certain documents to the Commission for Equality and Human Rights) shall not apply in certain cases involving the Security and Intelligence Agencies.
29. In our response we questioned why the Department felt the need to bring forward this set of minor amendments at that time, both in the light of Mr Justice Underhill's review of the ET rules and the other work that was being taken forward following the Government's response to *Resolving Workplace Disputes*. It seemed premature and slightly disjointed to bring forward these changes, which could potentially operate against others to be introduced in the future; for example, that of a fees regime. We suggested that none of the proposed changes was so pressing as to require its immediate introduction and urged a period of reconsideration before deciding whether they should be brought into effect within the proposed timeframe.
30. So far as the individual provisions were concerned, we restated our opposition to increasing deposits from £500 to £1,000, for which we saw little justification; and to any increase of the costs cap from £10,000 to £20,000. We found the Government's justification for bringing forward these changes unconvincing, particularly in the light of the proposed introduction of a fees regime which in our view would be likely to achieve the underlying aim of deterring unmeritorious claims.

### Employment Tribunal Rules: Review by Mr Justice Underhill

31. We warmly welcomed the Government's announcement of Mr Justice Underhill's review of the procedural rules for employment tribunals, on which he subsequently reported to Ministers in the Department for Business, Innovation and Skills (BIS) in July 2012. The Department, in turn, consulted on the draft rules in September 2012, to which we responded. We expressed our strong support for the ET change programme being taken forward by BIS, which in our view represents an effective remedy to resolve some long-standing concerns about the operation of employment tribunals. We welcomed the greater emphasis on the use of guidance from the tribunal Presidents to tribunals, which should help to bring about greater consistency in operating practices across the system. We also welcomed the use of much simpler language in the Rules, which would make them more easily understood by non lawyers. However, we still thought that a degree of complexity remained which needed to be addressed. Finally, we expressed strong support for Mr Justice

Underhill's view that sponsorship of ETs and the EAT should transfer from BIS to the Ministry of Justice and that responsibility for their respective Rules should lie with the Tribunal Procedure Committee under Section 22 of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007.

### Fee remissions in the First-tier Tribunal (Immigration and Asylum Chamber)

32. The Ministry of Justice consulted on proposals for addressing the removal of immigration legal aid in England and Wales from the existing immigration fees exemptions, which formed part of the fees exemptions and remissions system for appeals to the First-tier Tribunal (Immigration and Asylum Chamber). Following the removal of legal aid for immigration appeals a new remission system needed to be established for those people who were previously entitled to automatic fee remission by dint of qualifying for legal aid.
33. We expressed strong objection to the unduly rushed nature of the consultation, which was published on 18 December 2012 with a closing date of 29 January 2013, which allowed only six weeks over the Christmas period in which to consider the issues raised and frame an informed response. This was an unacceptably short period of time for consultation, particularly given the retrograde nature of the proposals.
34. We suggested that these proposals, the latest in a series of detrimental proposals affecting users of immigration and asylum tribunals, raised yet a further barrier to justice for users. Not only would they no longer be entitled to legally-aided advice, assistance and representation, but those who would previously have received legal aid would lose their automatic entitlement to fee remission, simply because the Government could not identify an alternative effective method of establishing who would previously have qualified for legal aid. We suggested that it was not possible to comment meaningfully on the proposed discretionary power of the Lord Chancellor to reduce or remit the fee(s) in '*exceptional circumstances*' since the proposals failed to explain what such exceptional circumstances might be, or how the Lord Chancellor's discretion would be applied, and by whom. The proposals assumed that those seeking a visa in the types of circumstances mentioned should be capable of supporting themselves without recourse to public funds, which in our view largely failed to acknowledge that some people might simply not have the means to pay fees of £80 per person for a paper determination or £140 per person for an oral hearing. The proposals argued against extending the HMCTS's existing fee remission system to immigration appeals because of the complexity and costs of adopting this system for large numbers of out-of-country appeals. However, since this argument does not apply to in-country appeals, we suggested that they should continue to have their entitlement to remission determined in accordance with the existing scheme.

## Judicial Review: proposals for reform

35. The Ministry of Justice also consulted on proposals for the reform of Judicial Review, the need for which was stated to have arisen because of apparent concerns that the existing process might in some cases be subject to abuses. Reform was proposed in three key areas – reducing the time limits for bringing certain types of proceedings; restricting the availability of renewed opportunities to seek permission to bring proceedings; and increasing fees for bringing proceedings.
36. We once again had cause to express objection to the rushed nature of the consultation, which appeared shortly before Christmas 2012, with a deadline of just over a month for the submission of responses. This will undoubtedly have hampered the ability of some respondents to prepare a submission in time.
37. With regard to the consultation proposals themselves, we responded in the strongest possible terms. We expressed deep concern at their nature and the effect they would be likely to have on the availability of administrative justice to ordinary citizens. We suggested that the proposals had little by way of evidential support; that they rested upon flawed assumptions about the nature of judicial review; and they risked denying access to justice as much to those with genuine claims as those without. We raised objections about the tone of the report and the language used within it. Of even greater concern was the dubious evidential basis for many of the proposals, which we suggested was highly flawed and based on unsubstantiated assumptions. We also objected strongly to the proposed increase in the levels of fees and we were not persuaded that the consultation had acknowledged the potential risks for access to justice.

## Consultation on Changes to the School Admissions Regulations

38. In last year's report we outlined our concerns about the revised Codes of Practice on School Admissions and School Admissions Appeals, which had been significantly reduced in size in the cause of the Government's aim to reduce prescription. We expressed the view that the statutory Codes needed to be comprehensive because of the absence of proper procedural rules governing the operation of admission appeal panels. We were pleased to note that the versions of the Codes that were subsequently laid before Parliament were more detailed than the earlier consultation drafts but thought that much of their commentary remained open to wide interpretation and lacked sufficient clarity. Of particular concern was the wording in the Introduction to the Appeals Code which stated:  
*"This Code is designed to give admission authorities the freedom they need to run the appeals process efficiently whilst maintaining minimum requirements which will ensure fairness and transparency. In drawing up this simpler, shorter Code we have been guided by the principle that admission authorities are best placed to decide how to meet those requirements".*
39. We expressed the view that, whilst much of this statement could be said to be accurate in respect of the arrangements for school admissions, it is less so with regard to appeals against school admission decisions. It also begs the question of whether the body which makes decisions about the admission of children to a particular

school is really best placed to decide how to meet the requirements for a fair and transparent system for dealing with appeals against its own decisions. We would strongly suggest that it is not.

40. The Department for Education subsequently consulted on a series of draft regulations concerning the coordination of admission arrangements, the appeals arrangements and infant class sizes. We suggested that it was not helpful that the Codes and associated procedural rules had been the subject of separate consultations when, in the light of their close inter-relation, it would have been preferable to have consulted on both issues simultaneously. So far as the Appeals Arrangements Regulations were concerned we expressed dismay at the removal of the provision for mandatory training of panel members and clerks, the introduction of which the former Council on Tribunals had recommended over a long period of time. Whilst the new Code is very clear that panel members must receive training before hearing appeals, having this prescribed in the regulations emphasises the importance of this issue. We also expressed some reservation about a new provision for panels to consist of a minimum of three members, which could lead to panels of five, seven or more. Apart from not being in the best interest of parents, this does not appear to be a sensible approach, not least in the light of the difficulty of recruiting sufficient numbers to sit on panels of this size.

#### **Exclusion from schools and pupil referral units in England: A guide for those with responsibilities in relation to exclusion**

41. The Department for Education also consulted on revised regulations and guidance on school exclusions flowing from provisions in the Education Act 2011, which, as mentioned in last year's report, replaced the existing appeal panels with Independent Review Panels (IRP). The new IRPs have no power to reinstate an excluded child but can merely quash the exclusion decision and direct that it be reconsidered by the governing body.

42. Once again the revised guidance had been reduced in size in the cause of reducing prescription. The consultation specifically sought views with regard to the scope of the proposed regulations for Academies. We took the opportunity to restate our long-standing concern that the appeals arrangements operated by Academies are not sufficiently open and transparent. Academies and their IRPs are not subject to the jurisdiction of the Local Government Ombudsman or the oversight of the AJTC. It is difficult, therefore, to have confidence either that Academies are in fact complying fully with the statutory duty to give parents a right of appeal against a decision to exclude a child or in the propriety of the arrangements for constituting appeal panels. These points raise significant access to justice concerns, which we urge the Department to address.

43. So far as the revised guidance is concerned we expressed the view that it largely restated the legislation and lacked sufficient detail and clarity throughout. We suggested that it ought to comprise clear, basic principles backed up by useful working examples of how best to comply with statutory duties. Moreover, we suggested that the Secretary of State ought to provide some over-arching guidance on what kind of behaviours would or would not warrant exclusion,



the absence of which would be likely to result in a free-for-all use of discretion in the way head teachers use exclusion as a sanction. This would be unacceptable.

44. In summary, we thought that the guidance needed to include more examples of how the various parties to whom it applies, and particularly IRPs, might comply with its provisions. We suggested that the aim should be for the guidance to be as comprehensive as possible, regardless of the impact on its length. We highlighted the need for better and more comprehensive guidance and advice for IRPs in understanding the principles which might be engaged in an application for judicial review (on which the new panels are required to base their decisions), the treatment of which subject was wholly inadequate in the consultation draft. We were pleased to note, however, that the mandatory training requirement was still prescribed in the regulations.

#### **Department for Work and Pensions – Mandatory reconsideration of revision before appeal**

45. We reported last year on provisions in the Welfare Reform Bill (now the Welfare Reform Act 2012), and in particular the new power to require those who disagree with a decision to request reconsideration before they can appeal against it.
46. The Department for Work and Pensions subsequently consulted on how the new reconsideration process would operate. We were particularly pleased to note that the Department had accepted that in future appeals should be lodged directly with the First-tier Tribunal and that a time limit for dealing with appeals following mandatory reconsideration should be introduced, both of which we had recommended in our 2011 'Time for Action' report<sup>4</sup>.
47. With regard to the proposals for mandatory reconsideration, whilst we had previously supported its introduction we now had some concerns that the proposals to implement these changes as outlined in the consultation could in fact act as a barrier to the exercise of appeal rights and introduce further delays for claimants in resolving their disputes. We raised particular concern about the lack of a time limit for undertaking mandatory reconsideration. We pointed out that delays currently arise through the time taken for the Department to undertake a review and prepare an appeal submission, and then afterwards for HMCTS to arrange an appeal hearing. Under the new arrangements, there is the potential for cases to be delayed indefinitely whilst awaiting mandatory reconsideration, especially as there appears to be no intention to impose a time limit on the DWP agencies to carry out a review – in contrast to the strict time limits imposed on claimants to request reconsideration and thereafter to make an appeal.
48. We again took the opportunity to raise concern about the numbers of Employment and Support Allowance decisions that continue to be overturned on appeal and suggested that the Department could and should do more to analyse the outcome of tribunal decisions in order to learn lessons from the many ESA appeals which are

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<sup>4</sup> Time for Action: A report on the absence of time limit for decision makers to respond to Social Security Appeals

successful. There are clear improvements which the Department could make having learned from the experience of ESA cases. These would materially benefit the way in which Personal Independence Payment is introduced in 2013.

49. Her Majesty's Revenue and Customs subsequently issued a similar consultation in respect of Tax Credit appeals to which we responded along similar lines.

#### **Consultation by the Law Commission, Scottish Law Commission and Northern Ireland Law Commission: Regulation of health care professionals/Regulation of social care professionals in England**

50. The Law Commissions of England, Scotland and Northern Ireland issued a joint consultation on proposals for reforming the system of regulation for health workers and social workers in England, with the aim of modernising and simplifying the existing arrangements and removing inconsistencies in the over-arching provisions so that all professionals are subject to the same legal framework. Our Social Affairs Committee had the opportunity to meet with officials from the English Law Commission to discuss the proposals ahead of preparing a response to the consultation.
51. The AJTC's interest lay in the consultation proposals as they related to the adjudication of fitness to practise cases and the arrangements for rights of appeal. Throughout the debate on the adjudication of the General Medical Council's (GMC) fitness to practise cases the AJTC has strongly recommended the complete separation of the GMC's investigation and adjudication functions, as recommended by Dame Janet Smith in her report on the Shipman Inquiry. Keeping the adjudication functions within the GMC, notwithstanding some of the proposals for repositioning and modernising adjudication – including the establishment of the Medical Practitioners Tribunals Service (MPTS) and the welcome appointment of His Honour David Pearl as its Chair – did not in our view address the concerns about the lack of independence of this arrangement cited in Dame Janet's report. The same concerns apply to the regulators of other healthcare and social care professionals, many of whom have been subject to similar, if not more serious, criticisms as those which were applied to the GMC as regards its handling of fitness to practise cases.
52. We otherwise welcomed many of the consultation's proposals, including requiring regulators to establish Article 6 ECHR compliant structures for adjudication by statute and the emphasis placed on ensuring the separation of investigation and adjudication of fitness to practise cases. We also suggested that, if possible, any new statute should allow for the option of the regulators' adjudication systems to join the unified Tribunals Service (something which had been a longer term aim of the former Office of the Health Professions Adjudicator). We also welcomed proposals for establishing rules for case management and suggested that they might wish to follow the model of the Tribunal Procedure Rules, in particular the overriding objective of dealing with cases fairly and obliging parties to co-operate with the Tribunal. We urged that three-person panels be adopted, comprising of a legally-qualified chair and expert wing members, as appointed by an independent body such as the Judicial Appointments Commission. Finally, we

suggested that appeals against decision of fitness to practise panels should lie to the Upper Tribunal rather than to the High Court in view of the expertise available in the Upper Tribunal in dealing with similar types of cases.

### **General Medical Council - The future of adjudication: making changes to our fitness to practise rules and to our constitution of panels and Investigation Committee rules**

53. Following the abolition of the Office of the Health Professions Adjudicator, we have continued to take a close interest in the GMC's plans for reforming the adjudication of fitness to practise cases. The GMC consulted on changes to its fitness to practise rules and the constitution of fitness to practise panels, to which we responded. The changes were intended to make the pre-hearing and hearing procedures shorter, reducing the stress for all involved and making the rules simpler and more flexible.
54. We warmly welcomed the over-riding aims of the new rules, and particularly the proposals for MPTS chairs to be involved in pre-hearing case management. Many of the proposed rule changes mirrored existing good practice within the Tribunal Procedure Rules, something which we felt would go some way to achieving the desired aims of the proposals. We raised a minor concern about a proposal relating to the substitution of panel members during a hearing and suggested that if a panel were to become inquorate too far into the proceedings it might sometimes be inevitable that the hearing could not continue and would have to be re-started with a completely fresh panel, taking account of the rules of natural justice, the stage the hearing had reached and the evidence which had already been heard. We suggested that, ideally, panels should have the benefit of guidance on such matters from the MPTS Chair.

### **Family Migration - a consultation**

55. In summer 2011 the Home Office issued a consultation on family migration. The paper covered a wide range of topics and our response focused on the proposals to improve the family visit visa application process and to remove the right of appeal for decisions concerning family visit visas.
56. The paper asked how the UK Border Agency (UKBA) could improve the family visit visa application process. Our response noted that the 'Right First Time' report contained suggestions which could help UKBA to improve the quality of its original decision-making processes.
57. Our response also noted that both anecdotal evidence and a number of decisions from the Upper Tribunal substantiated the view that guidance for applicants (on how to complete their application forms and setting out what supporting documentation was necessary) was insufficiently clear. We therefore rejected as unfair the characterisation of 'misuse of the appeals system' in respect of those cases whereby information that could have been put forward as part of the original application was instead only presented at appeal. We suggested that it would be productive to revisit the content of the guidance and assess whether it contained sufficient information to allow individuals to make a complete application.

In practical terms, we suggested that a checklist of necessary documentation could be provided to applicants. We also argued that a review of recent successful appeals should be conducted so as to determine whether there were common causes of UKBA's loss of the case, and with a view to improving the quality and precision of the guidance.

58. The paper set out that 63% of allowed appeals are based on new evidence that was produced at the appeal. The Government argued that instead of appealing, applicants could re-apply for a visa enclosing the appropriate information. In response to this we explained that we did not consider it appropriate to remove the right of appeal, and instead advocated an alternative approach to reducing unnecessary appeals whilst also preserving access to independent adjudication for those cases which continue to require it.
59. We suggested that taking steps to improve the family visit visa application process should serve to reduce the number of appeals. We also suggested the establishment of an internal reconsideration process. Under this process, applications rejected for lack of evidence could be reconsidered along with the additional evidence. This would mean that applicants and UKBA would be spared from an unnecessary tribunal hearing, but would leave open the option of a hearing in those cases where factors other than new evidence were material (that is, in 37% of cases, according to the Government's figures).

## 4. Exploiting opportunities for our voice to be heard on behalf of users

### Securing Fairness and Redress: Administrative Justice at Risk?

1. On 11 October 2011 we published our legacy document '*Securing Fairness and Redress: Administrative Justice at Risk?*', setting out an overview of the current state of play of administrative justice and the risks which it faces if action is not taken to reverse recent trends creating potential barriers against fair access to it – including the planned reduction in legal aid; the introduction of fees in some tribunals; the proposed democratic filter for complaints to the Housing Ombudsman; and the lengthening delays in providing hearing dates for appeals in many jurisdictions. The report also challenged the Government and Parliament to recognise the scale of poor decision making and the unnecessary cost deriving from the application, in some areas, of poorly drafted and inaccessible legislation. It also invited the Government to consider carefully the effect of recurrent poor decision-making in some departments. The case study highlighted in the report shows how the implementation of Employment and Support Allowance by DWP has breached every one of our *Principles* for good administrative justice, causing an inevitable rise in the numbers of appeals and complaints as a result.
2. The report made a number of recommendations in 5 key areas, including:
  - the need for good laws to underpin administrative justice and better decision making;
  - the need for public service decisions to be made right first time;
  - the need for help, advice and representation in pursuing redress;
  - the need for better management and, where necessary, reform of tribunals across the UK;
  - the need for wider strategic reform in administrative justice and dispute resolution services.
3. The report invited the Government to address the widening gap between political rhetoric about public service responsiveness and the all too frequent reality for public service users of decisions and decision-making services that remain inaccurate, impersonal and unresponsive. It stressed how good administrative justice is essential to an open 21st century democracy and how a strong administrative justice system is equally vital if government is to maintain and develop public trust in its ability to deliver quality public services.

### Welfare Reform

4. We reported last year on our concerns about some aspects of the Welfare Reform Act 2012, and in particular the introduction of a new mandatory reconsideration process, which will delay the exercise of the right of appeal, as well as the abolition of the Office

of the Social Fund Commissioner. Our Chairman raised our concerns in writing with the Secretary of State about both of these matters, receiving a disappointing response.

5. During the past year we have followed closely the developing proposals for locally provided support to replace the discretionary Social Fund, the arrangements for which will fall to English local authorities and otherwise to the Scottish and Welsh Governments. These changes reflect the Government's localism agenda, but in this instance they have the potential to produce unsatisfactory variations in outcome, both in terms of the lack of uniformity in financial provision for some of the most vulnerable people in society, and also in respect of the appeal rights against localised decision-making. Even at this late stage, with the new arrangements due to come into force in April 2013, it is still unclear whether there will in fact be a universal right of appeal, and if so, how this is to be exercised.
6. We have also paid particular attention to proposals concerning reform of housing benefit and council tax benefit, the former which is to be subsumed within the new Universal Credit and the latter which is to be replaced by new locally provided support by way of reduction in council tax. This latter reform will again require local authorities in England, and the Scottish and Welsh Governments, to work up their own local arrangements.

### **Submission to the Communities and Local Government Select Committee**

7. The Communities and Local Government Select Committee issued a call for evidence on the implementation of welfare reform by local authorities, to which we submitted evidence. We suggested that the Committee's inquiry would be enhanced by investigating the effect of welfare reform on associated appeal rights, since this raised particular questions as to the degree of consultation between the Department for Communities and Local Government (DCLG) and other relevant bodies.
8. We also suggested that there was evidence to suggest that the DCLG had adopted an England-centric approach to the entire issue, notwithstanding the significant impacts of the localisation of welfare upon Scotland and Wales. In particular, the DCLG did not appear to acknowledge the difficulties which could arise from the removal of council tax benefit appeals from a tribunal operating across Great Britain (i.e. the First-tier Tribunal (Social Security and Child Support)) - to one whose operations are devolved in Scotland and Wales (i.e. the Valuation Tribunal for England, the Valuation Tribunal for Wales and, in Scotland, the Valuation Appeal Committees).
9. We suggested that in various ways the tribunal which will now hear council tax support cases is ill-suited to this role, a problem which Schedule 4 to the Local Government Finance Act 2012 (providing for 'ticketing' of social security judges to the Valuation Tribunals in England to hear council tax appeals) implicitly recognised in relation to the English tribunals (but not the Scottish or Welsh equivalents). We argued that the Ministry of Justice has a role to play in assisting DCLG and other bodies as they work with the consequences of new appeals arrangements.

10. We also pointed out that the abolition of the Office of the Social Fund Commissioner potentially posed risks for those currently eligible for Social Fund grants or loans. This is especially so given that there will not necessarily be any effective alternative means of challenging decisions under new locally provided schemes.
11. Finally, we suggested that local authorities implementing reform face financial and resource-based impediments to preparing for their new responsibilities. We noted that there is also a risk of public ignorance, both of the reforms themselves and of their potential consequences.

### **Employment and Support Allowance**

12. We also mentioned in our last report Professor Malcolm Harrington's first report of his independent review of the work capacity assessment (WCA) in relation to eligibility for Employment and Support Allowance (ESA). Professor Harrington has recently completed and published a report of the third and final year of his review.
13. The introduction of ESA and the conversion of existing Incapacity Benefit cases to ESA have led to significant increases in appeals from around 250,000 in 2009 to around 450,000 in 2012, with the prospect of this reaching 500,000 in 2013 following the introduction of Universal Credit and Personal Independence Payment. The associated annual cost of dealing with ESA appeals is reported to be around £50 million.
14. The operation of the medical assessment process by ATOS Healthcare has been widely criticised in the press and by the House of Commons' Work and Pensions Select Committee. Professor Malcolm Harrington's first report concluded that interactions between ATOS health professionals and claimants were often impersonal, mechanistic and lacking in clarity. He also found that many decision makers were simply rubber-stamping the ATOS assessment rather than taking it into account along with the other medical evidence before them. Appeal success rates for ESA cases have been running at around 40% but, for those cases where the appellant is represented, this figure is nearer 70%.
15. In the past year our members have undertaken a series of visits to ESA appeal hearings in order to monitor both the level of delays in getting cases to a hearing and whether the implementation of Professor Harrington's recommendations in his reports has led to perceptible improvements in the process and quality of initial decision-making. We observed a total of 55 ESA appeals, which represents but a small sample of the total number of cases heard annually by tribunals. The average end-to-end delay from lodgement of the appeal with DWP to the date of hearing was 34.3 weeks for the cases we saw, although this figure masks some regional variations, with appeals in the north of England taking longer and those in Wales taking less time than the overall average.
16. Our overall impression was of some improvement beginning to become apparent, with fewer successful appeals. Tribunal members, however, continue to have serious misgivings about the reliability of ATOS assessments, particularly in cases involving mental health issues. Tribunals have begun to provide feedback to decision makers

on the reasons why appeals have been allowed, which should improve the learning process within with DWP. This in turn should hopefully lead to further improvements in initial decision making processes.

## Employment Tribunals

17. In the light of our dwindling resources in recent years we have been forced to restrict our usual wide-ranging programme of visits to tribunals under our oversight, instead focussing our attention on particular areas of interest and concern.
18. During the year we have paid special attention to the changes being brought forward in employment law and in the operation of employment tribunals through the Enterprise and Regulatory Reform Bill. A small group of our members has met with officials in the Department for Business, Innovation and Skills to discuss the Bill's provisions, how they would be taken forward and the impact they might have on the tribunal's users. These proposed changes are running in tandem with others being brought forward by the Ministry of Justice to introduce fees for bringing a claim to the employment tribunal and an appeal to the Employment Appeal Tribunal (as discussed in Chapter 3). We also stressed that the time in proceedings at which any fee might become payable should fit comfortably with the proposed additional conciliation processes so as to allow sufficient leeway for the parties to resolve disputes without recourse to the tribunal where possible.
19. Since we were focussing on these changes in employment tribunals we also took the opportunity to undertake a series of visit to tribunal hearings. It is our normal practice to arrange visits to tribunal hearings in advance but on this occasion we were keen to experience the process from the user's perspective and so decided to undertake the visits unannounced. As a matter of courtesy our Chairman alerted the President, Judge David Latham, of our intention in this regard.
20. Despite the lack of prior notice our members were warmly received and without exception reported positively on their findings. Some issues arose during a couple of visits relating to parking and access to the tribunal venue for disabled people in wheelchairs. These were raised by one of our members who is himself a wheelchair user. At a couple of hearings our members observed the difficulty faced by self-represented applicants in putting forward their case and cross-examining defendants, particularly when the other side was legally-represented. One member observed that even articulate applicants could be hampered by their unfamiliarity with the tribunal and limited understanding of how best to argue their case, which placed them at a disadvantage compared with respondents represented by an experienced barrister. This situation is only likely to get worse following the removal of legally-aided advice and assistance, not only for users of employment tribunals but also for those of most other tribunal jurisdictions.



## **Appendices**

- A Membership of the AJTC
- B Cost of the AJTC and its Scottish and Welsh Committees
- C Note on the constitution and functions of the Administrative Justice and Tribunals Council
- D Statutory Instruments 2011/2012
- E Open letter from Richard Thomas, AJTC Chairman, to Helen Grant MP, Under Secretary of State for Justice

# Appendix A

## Membership of the AJTC

Within the period covered by this report the following members' appointments came to an end:

**Dr Adrian Stokes OBE**, member of the Council from November 2003 until October 2011.

**Ann Abraham**, ex-officio member of the Council from November 2002 until December 2011.

We also said farewell to **Professor Alice Brown CBE** and **Jodi Berg OBE** whose first-term appointments came to an end in November 2012 and whom the Ministry of Justice decided not to re-appoint in the light of our imminent abolition..

### AJTC Membership as at 31 December 2012

**Richard Thomas CBE, LLD**: Chairman of the AJTC since 1 September 2009. Information Commissioner from November 2002 until June 2009. Currently Deputy Chairman of the Consumers Association, Trustee of the Whitehall and Industry Group, adviser to the Centre for Information Policy Leadership and board member of the International Association of Privacy Professionals.

**Richard Henderson CB, WS**: Solicitor to the Scottish Executive and Head of the Government Legal Service for Scotland until 2007. President of the Law Society of Scotland from 2007-2009. Board Member of Signet Accreditation. Member of the AJTC and Chair of the Scottish Committee from August 2009, member of Scottish Committee from January 2009.

**Professor Sir Adrian Webb**: First Vice-Chancellor of the University of Glamorgan from 1992-2005. Chair, Pontypridd and Rhondda NHS Trust; Non Executive Director, Welsh Assembly Government until March 2008. Chair of the Wales Employment and Skills Board and Wales Commissioner on the UK Commission for Employment and Skills. Member of the AJTC from May 2008 and Chair of the Welsh Committee from June 2008.

**Professor Andrew Coyle CMG**: Emeritus Professor of Prison Studies London University. Visiting Professor Essex University. Former Director of the International Centre for Prison Studies. Member of the Judicial Appointments Board for Scotland. Member of the AJTC and its Scottish Committee from September 2009.

**Sukhvinder Kaur-Stubbs**: Chair of the Board of Trustees, Volunteering England and non-executive board member of Consumer Focus, Office for Public Management and of SCIE (Social Care Institute of Excellence). Better Regulation Taskforce Member from 2001-2006. Chief Executive of the Barrow Cadbury Trust from 2001-2009. Member of the AJTC since February 2010.

**Penny Letts OBE:** Policy Consultant and Trainer. Former Law Society Policy Advisor. Member of the Mental Health Act Commission 1995-2004. Member of the Judicial Studies Board's Tribunals Committee 2003-2011. Member of the AJTC since September 2002.

**Bronwyn McKenna:** Solicitor. Assistant General Secretary at UNISON. Member of the Central Arbitration Committee since 2002. Sits on the Employment Law Committee of the Law Society of England and Wales and chairs the Legislative and Policy Committee of the Employment Lawyers Association. Member of the AJTC since May 2007 and the Council's representative on the Tribunal Procedure Committee since 2009.

**Professor Mary Seneviratne:** Professor of Law at Nottingham Law School, Nottingham Trent University. Board member of the Office for Legal Complaints. Member of the AJTC since February 2010.

**Dr Jonathan Spencer CB:** Senior civil servant at DTI and MoJ from 1974-2005. Chair Church of England Pensions Board; Deputy Chair, East Kent Hospitals Foundation Trust; Member, Gibraltar Financial Services Commission; school governor; company director. Member of the Council since December 2005.

**Brian Thompson:** Senior Lecturer in Law at the University of Liverpool. Adviser on Public Law to the Northern Ireland Ombudsman. Member of the Council since 2007.

**Dame Julie Mellor:** Parliamentary Commissioner for Administration and the Health Service Commissioner for England (Parliamentary and Health Service Ombudsman) since January 2012.

Full details about each of the members of the AJTC can be viewed on the AJTC's website at [www.justice.gov.uk/ajtc](http://www.justice.gov.uk/ajtc)

## Appendix B

### Cost of the AJTC and its Scottish and Welsh Committees

This section contains details of the AJTC's income and expenditure for the financial year ending 31 March 2012, with the corresponding 2010/11 figures for comparison.

The AJTC is funded through the Ministry of Justice. Certain costs such as accommodation, IT and accounting/payroll services are funded centrally and do not feature in the account below. Other costs, such as staff pay rates, are determined centrally but paid from the AJTC budget.

	AJTC		Scottish Committee		Welsh Committee	
	2010-11	2011-12	2010-11	2011-12	2010-11	2011-12
Staff Salaries <sup>1</sup>	406,393	388,346	82,096	82,667	32,664	31,000
Members' Retainers <sup>2</sup>	283,245	256,191	38,201	34,532	19,491	19,224
Members' Travel etc <sup>3</sup>	23,794	20,997	3,145	2,405	3,311	3,895
Agency Staff <sup>4</sup>	37,874	-	-	-	-	-
Printing and Publishing <sup>5</sup>	10,231	2,398	-	-	-	-
Other Admin Costs <sup>6</sup>	64,609	43,319	4,650	547	-	-
<b>Totals</b>	<b>826,146</b>	<b>711,251</b>	<b>128,092</b>	<b>120,151</b>	<b>55,466</b>	<b>54,119</b>

#### Notes

<sup>1</sup> The staff of the AJTC's Secretariat are civil servants seconded from the Ministry of Justice and the Scottish Government. Salary costs include employer's National Insurance contributions and superannuation. Welsh Committee staff salaries are apportioned on the basis of their time spent on Welsh Committee duties.

<sup>2</sup> The retainer for the AJTC Chairman is £56,051 and £28,025 for the Scottish and Welsh Committees Chairmen. The retainers for members of the AJTC (based on 44 days work per year), the Scottish Committee (based on 35 days work per year) and Welsh Committee (based on 22 days per year) are £12,816, £10,194 and £6,408 respectively. The figures for members' retainers include the remuneration of the Scottish and Welsh Committee Chairmen and the member of the AJTC who is also a member of the Scottish Committee.

<sup>3</sup> Members' expenses for attending meetings of the AJTC, visits to tribunals and other events, including Scottish Committee members' expenses for attending meetings held in London.

<sup>4</sup> Agency staff not employed during 2011/12.

<sup>5</sup> Other general expenditure, including the AJTC Conference and other events, office supplies, postage and catering for meetings etc. The Welsh Committee does not have its own secretariat and consequently its running costs are met by the AJTC.

<sup>6</sup> The figures shown in the table relate to the financial year 1 April 2011 to 31 March 2012. In the light of the AJTC's impending abolition resources for the final months of its operation were met from a central MoJ budget.

## Appendix C

# Note on the constitution and functions of the Administrative Justice and Tribunals Council

1. The Administrative Justice and Tribunals Council (AJTC) was set up by the Tribunals, Courts and Enforcement Act 2007 to replace the Council on Tribunals.
2. The AJTC consists of not more than 15 nor less than 10 appointed members. Of these, either two or three are appointed by the Scottish Ministers with the concurrence of the Lord Chancellor and the Welsh Ministers; and either one or two are appointed by the Welsh Ministers with the concurrence of the Lord Chancellor and the Scottish Ministers. The remainder are appointed by the Lord Chancellor with the concurrence of the Scottish Ministers and the Welsh Ministers.
3. The Lord Chancellor, after consultation with the Scottish Ministers and the Welsh Ministers, nominates one of the appointed members to be Chair of the AJTC. The Parliamentary Commissioner for Administration (the Parliamentary Ombudsman) is a member of the AJTC by virtue of his or her office.
4. The Scottish Committee of the AJTC consists of the two or three members of the AJTC appointed by the Scottish Ministers (one being nominated by the Scottish Ministers as Chair) and three or four other members, not being members of the AJTC, appointed by the Scottish Ministers. The Parliamentary Ombudsman and the Scottish Public Services Ombudsman are members of the Scottish Committee by virtue of their office.
5. The Welsh Committee of the AJTC consists of the one or two members of the AJTC appointed by the Welsh Ministers (one being nominated by the Welsh Ministers as Chair) and two or three other members, not being members of the AJTC, appointed by the Welsh Ministers. The Parliamentary Ombudsman and the Public Services Ombudsman for Wales are members of the Welsh Committee by virtue of their office.
6. The principal functions of the AJTC as laid down in the Tribunals, Courts and Enforcement Act 2007 are:
  - a) to keep the administrative justice system under review;
  - b) to keep under review and report on the constitution and working of listed tribunals; and
  - c) to keep under review and report on the constitution and working of statutory inquiries.
7. The AJTC's functions with respect to the administrative justice system include considering ways to make it accessible, fair and efficient, advising the Lord Chancellor, the Scottish Ministers, the Welsh Ministers and the Senior President of Tribunals on its development and referring to them proposals for change, and making proposals for research.

8. The “administrative justice system” means the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including the procedures for making such decisions, the law under which they are made, and the systems for resolving disputes and airing grievances in relation to them.
9. The AJTC’s functions with respect to tribunals include considering and reporting on any matter relating to listed tribunals that the AJTC determines to be of special importance, considering and reporting on any particular matter relating to tribunals that is referred to the AJTC by the Lord Chancellor, the Scottish Ministers and the Welsh Ministers, and scrutinising and commenting on existing or proposed legislation relating to tribunals.
10. “Listed tribunals” are the First-tier Tribunal and Upper Tribunal established by the 2007 Act and tribunals listed by Orders made by the Lord Chancellor, the Scottish Ministers and the Welsh Ministers. The AJTC must be consulted before procedural rules are made for any listed tribunal except the First-tier Tribunal and Upper Tribunal. The AJTC is represented on the Tribunal Procedure Committee that makes procedural rules for the First-tier Tribunal and Upper Tribunal.
11. The AJTC’s functions with respect to statutory inquiries include considering and reporting on any matter relating to statutory inquiries that the AJTC determines to be of special importance, and considering and reporting on any particular matter relating to statutory inquiries that is referred to the AJTC by the Lord Chancellor, the Scottish Ministers and the Welsh Ministers.
12. “Statutory inquiry” means an inquiry or hearing held by or on behalf of a Minister of the Crown, the Scottish Ministers or the Welsh Ministers in pursuance of a statutory duty, or a discretionary inquiry or hearing held by or on behalf of those Ministers which has been designated by an order under the Tribunals and Inquiries Act 1992. The AJTC must be consulted on procedural rules made by the Lord Chancellor or the Scottish Ministers in connection with statutory inquiries.
13. Members of the AJTC and the Scottish and Welsh Committees have the right to attend (as observer) proceedings of a listed tribunal or a statutory inquiry, including hearings held in private and proceedings not taking the form of a hearing.
14. The AJTC has no authority to deal with matters within the legislative competence of the Northern Ireland Assembly.
15. The AJTC must formulate, in general terms, a programme of the work that it plans to undertake in carrying out its functions. It must keep the programme under review and revise it when appropriate. It must send a copy of the programme, and any significant revision to it, to the Lord Chancellor, the Scottish Ministers and the Welsh Ministers.
16. The AJTC must make an annual report to the Lord Chancellor, the Scottish Ministers and the Welsh Ministers, which must be laid before Parliament, the Scottish Parliament and the National Assembly for Wales. The Scottish Committee must make an annual report to the Scottish Ministers, who must lay the report before the Scottish Parliament. The Welsh Committee must make an annual report to the Welsh Ministers, who must lay the report before the National Assembly for Wales.

## Appendix D

### Statutory Instruments 2011/2012

Listed below are the Statutory Instruments (excluding Orders under the Traffic Management Act 2004) considered by the Administrative Justice and Tribunals Council and made during the period covered by this report.

The Administrative Justice and Tribunals Council (Listed Tribunals) (Scotland) Amendment Order 2011	S.S.I. 2011/405
The Civil Aviation (Air Travel Organisers' Licensing) (Amendment) Regulations 2012	S.I. 2012/1134
The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012	S.I. 2012/1017
The Contaminated Land (Wales) (Amendment) Regulations 2012	S.I. 2012/283 (W.47)
The Designation of Features (Appeals) (England) Regulations 2012	S.I. 2012/1945
The Designation of Features (Appeals) (Wales) Regulations 2012	S.I. 2012/1819 (W.228)
The Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) (No.2) Regulations 2011	S.I. 2011/2675
The Disabled Persons (Badges for Motor Vehicles) (Scotland) (Amendment) (No.2) Regulations 2011	S.S.I. 2011/410
The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2012	S.I. 2012/468
The First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011	S.I. 2011/2841
The Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012	S.S.I. 2012/180
The Mental Health Tribunal for Scotland (Practice and Procedure) (No.2) Amendment Rules 2012	S.S.I. 2012/132
The Police Appeals Tribunals (Amendment: Metropolitan Police) Rules 2011	S.I. 2011/3029
The Police Appeals Tribunals Rules 2012	S.I. 2012/2630
The Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012	S.I. 2012/531 (W.83)
The Road Traffic (Parking Adjudicators) (East Ayrshire Council) Regulations 2012	S.S.I. 2012/139
The Road Traffic (Parking Adjudicators) (South Ayrshire Council) Regulations 2012	S.S.I. 2012/142
The School Admissions (Appeals Arrangements) (England) Regulations 2012	S.I. 2012/9

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The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012	S.I. 2012/1033
The Special Educational Needs Tribunal for Wales (Amendment) Regulations 2012	S.I. 2012/1418 (W.174)
The Special Educational Needs Tribunal for Wales Regulations 2012	S.I. 2012/322 (W53)
The Town and Country Planning (Inquiries Procedure) (Scotland) Amendment Rules 2011	S.S.I. 2011/379
The Trade Marks and Trade Marks (Fees) (Amendment) Rules 2012	S.I. 2012/1003
The Water Services Charges (Billing and Collection) (Scotland) Order 2012	S.S.I. 2012/53

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# Appendix E

## Open letter from Richard Thomas, AJTC Chairman, to Helen Grant MP, Under Secretary of State for Justice

Helen Grant MP  
Under Secretary of State for Justice  
Ministry of Justice  
102 Petty France  
London  
SW1H 9AJ

22 November 2012

Dear Minister,

### **Administrative Justice & Tribunals Council Open Letter**

I am very pleased to have this opportunity to repeat my congratulations and those of the members of my Council on your appointment. We are delighted that administrative justice is explicitly one of a number of aspects of the justice system within your area of responsibility.

You – and Parliament – will soon have to take an early and potentially controversial decision about the future of the AJTC. It will not surprise you that my overall aim in writing this open letter is to convince you that it would make good sense to defer your decision for the moment. This letter largely repeats points made in my letters to you of 10th September and 8th November and when we met on 6th September.

Let me start by summarising the key points I wish to make in this letter.

- There are currently unprecedented challenges facing Administrative Justice
- AJTC has a solid track-record of helping to improve the system
- There are tangible benefits in retaining the AJTC
- There would be significant problems in abolishing the Council
- The benefits of abolition are illusory
- There are more sensible and constructive ways forward.

### **Challenges facing Administrative Justice**

I am confident that, not least from your days in practice, you are very much aware of the challenges facing Administrative Justice at the moment. I never lose any occasion to remind everyone of the importance of this system. My predecessor, the sadly-missed Lord Tony Newton, spoke often of the dichotomy of its significance for ordinary citizens and its Cinderella status in legal and political circles. More recently, the Public Administration Select Committee said in its Report earlier this year: “This subject may seem obscure and technical, but it touches upon the lives, the standards of living, and rights of millions of citizens every year.”

The system is noteworthy for the very high volumes of cases which bring people into contact with both public administration and the machinery of justice. I have previously described the Administrative Justice system as a pyramid or iceberg. At its base, the number of decisions affecting individuals is huge. Many of these decisions may be wrong or open to challenge, but the majority of grievances do not proceed all the way up to a formal system. Nevertheless we know that, just at the tip of the iceberg, there are over one million cases a year proceeding to a tribunal, ombudsman or other dispute resolution scheme.

In the years ahead, increased volume demands may make the system very creaky indeed. In particular, we can anticipate considerable additional demand being driven by the introduction of new benefits - Universal Credit and Personal Independence Payment, by changes to Housing and Council Tax Benefits and by other welfare reforms. At the same time, imposing fees on appellants (both to recover costs and to manage demand) takes everyone into difficult and controversial territory at policy and operational levels. Fees have already been introduced for many immigration appeals; they are on their way in employment tribunals; and just this week the Lord Chancellor has announced the intention of increasing fees for Judicial Review applicants.

The austerity programme presents major challenges across the system. There have been impressive productivity improvements within HMCTS which we welcome, but we have worries as cuts hit staff numbers and tribunal venues. More immediate and acute will be the impact of cuts to legal aid and the funding of advice services. This will not only increase the number of self-represented appellants. It will also seriously reduce the numbers who get advice before lodging an appeal or attending a hearing. This will remove a useful filter which weeds out unmeritorious cases and will increase the number who are entirely unprepared. This will mean more appeals, more adjournments, longer hearings, more delay and ultimately more cost.

When we met earlier in the month, I emphasised the ability of the AJTC to keep the whole the system under review and identify the knock-on effects from one part of the system to another. A major challenge remains to make all parts of the system inter-act better together. We have paid special attention in recent years to original decision-making in a wide range of public bodies. Too many mistakes need recourse to justice for a remedy – and this goes much wider than Sir Richard Branson having to use Judicial Review to expose basic mistakes inside the Department of Transport. At the level of ordinary citizens, PASC endorsed our concerns about poor quality of decision-making which manifests itself in high volumes of successful appeals. This can indicate mistakes, mistakes which are not put right and unacceptable ways of dealing with people. There has been considerable concern in the last couple of years, for example, about the handling of Work Capability Assessments for those claiming Employment and Support Allowance (ESA) or being transferred from Incapacity Benefit to ESA. Criticisms of both Atos and DWP officials, which have been voiced by Professor Malcolm Harrington, the National Audit Office, the Public Accounts Committee and others have been echoed in our own observations at tribunals and in our reports. Just last week, I observed a SSCS case involving a long-term heroin addict with physical and mental problems - which were manifestly obvious to the tribunal - who had been assessed by an Atos nurse as effectively free of symptoms.

Different types of challenge are presented by the pressures of devolution. I expand on this aspect below. For now, I give only one example: the intention announced by the last Lord Chancellor to unify the courts and tribunal judiciary under the leadership of the Lord Chief Justice presents very real “cross-border” challenges. In our view, that intention can and should only be carried forward after resolving the nature and extent of tribunal devolution in Scotland.

My final point here puts some of these challenges into a more political context. The language of Coalition priorities is welcome as a response to the sorts of problems which I have outlined. Ministers talk of the “fairness” agenda and “governing for the many, not the few”. There is much talk of reforming public services and making sure that users are seen as paramount when designing and delivering services. Against this background, it would seem very strange to abolish the AJTC – one of the few public bodies focused on improving public services from the user perspective – and to claim that its functions should be performed inside government, which is not only the monopolistic provider of the services but also the “opponent” when the citizen claims that a mistake has been made. Nobody would suggest that banks should be given the task of improving redress schemes for consumers in dispute with banks.

### AJTC’s track-record

When we met earlier this month, I was encouraged that you were aware of the solid track-record which has been established over the years by the AJTC and its predecessor, the Council on Tribunals. I am proud of what we have done, especially in the last few years with very limited resources and under the threat of abolition.

The original Council was established in 1958 by Harold Macmillan’s government – perhaps one the first Conservative quangos – and both Councils have made a constructive input since. We played a major role in stimulating and progressing the Leggatt Review and the reforms of the 2007 Act which followed. Leggatt identified the crucial connections between the different parts of the system and envisaged AJTC as the “hub at the centre of the administrative justice wheel.”

To highlight in chronological order some of our other contributions which have had concrete impact:

- 1970 – CoT made the case for a more coherent structure for the main UK tribunals
- 1991 – Model Rules for Tribunals
- 2002 – Framework of Standards for Tribunals
- 2002 – Making Tribunals Accessible to Disabled People
- 2003 - Guide to Tribunal Rules
- 2009 – Administrative Justice Principles
- 2011 – Right First Time
- 2011 – Patients’ experiences of the First-tier Tribunal (Mental Health). (I have already told you about our impact on judicial training and other aspects of this previously-neglected jurisdiction and sent you the new HMCTS information sheet for patients appearing before a Mental Health Tribunal, which was produced as a direct result of our report.)

- 2012 – Putting it Right (Proportionate Dispute Resolution)
- 2012 – Guidance on Schools Admissions and Exclusions Appeals
- 2013 (forthcoming) - Research Agenda

As part of our track-record, it is also worth highlighting the value of our statutory rights to visit and observe all aspects of tribunal hearings. This gives us real insights, which we pass on to the key players, about what is really happening “at the coalface”. Just yesterday, our Council meeting heard about two new areas of concern – a tribunal which reserved all decisions until after hearing six similar, but not identical, cases and another tribunal which (because of the need to compress each hearing into a 30 minute slot) did not tell appellants of its decision face to face – only in a short template letter issued some days later.

### **Benefits of retaining AJTC**

Let me turn now to some of the main benefits of retaining the AJTC. I hardly need to remind you that the 2007 Act established the Council as a statutory, independent body charged with keeping the administrative justice system under review and putting forward proposals for reform. I stress that our advice is directed primarily at the Secretary of State – in practice, to you as the Minister responsible for administrative justice. We are there as a resource and an asset for you and your officials.

We believe that we are (and are widely seen to be) expert, well-connected, user-focused and credible. We have enjoyed and made good use of our standing as a neutral body, bringing together many diverse stakeholders, not least at our annual conferences. A further advantage of being a permanent and dedicated body, with very low turnover of Council and Secretariat members, is that we have a long corporate memory. As a ‘critical friend’, our independence makes it easier to develop innovative thinking and challenge vested interests. And I have already mentioned our span across the whole of Great Britain.

In short, we believe that we remain well-placed to assist MoJ, alerting you to key issues and emerging problems and helping to find worthwhile, workable and acceptable solutions. It is ironic, but welcome, that the MoJ strategic work programme is likely to reflect significant AJTC input. But we are concerned that administrative justice is not a priority for the MoJ as a whole, that there are heavy pressures on staffing resources, that there is no on-going independent input or endorsement and that new issues will inevitably arise. We believe that there could be considerable benefit in bringing the AJTC resource closer to the development and implementation of all the work that needs to be done.

### **Problems of abolishing AJTC**

It is clear that abolition of the AJTC is not proving as easy as may have been originally thought when the intention was first communicated in July 2010. I suggest that one of the fundamental problems is that there has not been any clear or consistent rationale for abolition. Widespread support for the AJTC functions has surfaced during Parliamentary debates, in responses to the MoJ consultation, from the Welsh and Scottish governments and in the PASC report. That report described the function of independent review as “one of vital national

importance". The PASC report raised a challenging agenda for further close parliamentary scrutiny of any Abolition Order. The process of abolition will be a distraction from other, more important, priorities. The intention of both Scottish and Welsh governments to set up oversight bodies (to replicate the very well-respected work of our Welsh and Scottish Committees) will highlight the absence of any organisation focused on administrative justice at English or GB levels.

If I may make a more political point, abolition of the AJTC in advance of the 2014 Referendum can be seen as inconsistent with case for preserving Union. The Prime Minister has signalled high priority for that case and it is getting strong Whitehall attention. As that effort gets under way, it will seem very strange – and not just in Scotland – to be abolishing almost the only justice body with a GB-wide remit. More practically, the MoJ will need over the coming years to handle a wide and demanding range of GB-wide issues whether the Referendum is followed by moves towards independence or further devolution.

### **Benefits of Abolition?**

One of the rationales for abolition has been cost savings. But I have to suggest that it will now be very difficult to justify abolition on that basis. When we met, I left with you an analysis which suggested that the savings may now be as low as £400,000 over the remaining two years of the Review period. If the cost of the enlarged MoJ team is then factored in, the net result would be an increase, not a reduction, in overall cost.

It might be thought that it would be a benefit to have less challenge to MoJ and other government departments on administrative justice policy issues. But I do not think I need to persuade you that this is not a valid point. As an independent critical friend, we have sometimes needed to be critical. But we fully accept that our role is advisory and that it is for the government to decide and Parliament to legislate. We hope that we have never been other than constructive and restrained in expressing our views.

The only remaining so-called benefit would be compliance with the policy (on which the Cabinet Office has led since 2010) of abolishing Quangos which "failed" the three-tiered test. But we fear that the original intention to abolish was adopted somewhat hastily and without knowledge of the full facts. Abolition now could be characterised as a "tick-box" exercise simply to cut one more public body. It is widely accepted that the public sector should do much more to improve the quality of services for users. Is it a benefit, for the sake only of numbers, to abolish a public body which is uniquely charged with precisely that remit, and which is also focused on improving the quality and efficiency of justice?

### **Ways Forward**

It will not be easy to maintain public confidence in the administration of justice at a time of unprecedented pressure on public spending, but I know that you will appreciate the fundamental importance of that task.

As you are aware, in October AJTC produced a draft Strategic Plan for 2013-16 to indicate the nature of the activities we believe need to be tackled in the event of our retention. We have been consulting key stake-holders on that Plan. I need to emphasise that it spells out how we could use our knowledge, experience and appetite for innovation

to make a substantial contribution to MoJ's Transforming Justice programme, assist with the 'More for Less' approach and help reduce MoJ spending. In particular we are keen to follow up the "Right First Time" agenda, which we pioneered, and to promote more user-friendly and proportionate procedures for correcting officialdom's mistakes. Reducing case volumes and reducing the time and complexity of cases which do proceed can only reduce the pressures on the MoJ budget.

I also need to emphasise that we are not arguing for the status quo. As our draft Strategic Plan spells out, the AJTC is ready for far-reaching structural, functional and operational reforms. We are more than ready to engage in discussions with your officials about the shape of such changes and our relationship with the MoJ. This could (without the need for statutory change) include an end to AJTC's status as a Non-Departmental Public Body.

As you are aware, my overall suggestion to you is that you should defer any abolition decision at least until the outcome of 2014 referendum is known. Obviously, we would anticipate a Triennial Review in due course which should then lead to fully-informed decisions about the AJTC's future.

## Conclusion

To conclude, AJTC is currently a fragile – and, frankly, frustrated – organisation. Despite significantly reduced resources and the threat of abolition for most of that time, we have delivered all the commitments we made in our Strategic Plan for 2010-13. But we know that a great deal remains to be done. Our focus as an independent body – in statute and reality – is the accessibility, fairness and efficiency of the Administrative Justice system as a whole. With the greatest respect, we do not believe that these functions can simply be brought inside the MoJ or discharged by the MoJ alone.

As I have mentioned, the Leggatt Review led to AJTC being established as the hub at the centre of the Administrative Justice wheel. Wheels cannot function properly if the hub is removed.

Yours sincerely,

**Richard Thomas CBE**  
Chairman, AJTC



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