Land, Valuation and Housing Tribunals: The Future

Law Commission
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The Law Commission

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LAND, VALUATION AND HOUSING TRIBUNALS: THE FUTURE

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The Law Commission was set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

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THE LAW COMMISSION

LAND, VALUATION AND HOUSING TRIBUNALS: THE FUTURE

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THE LAW COMMISSION

Report on a reference to the Law Commission under section 3(1)(e) of the Law Commissions Act 1965

LAND, VALUATION AND HOUSING TRIBUNALS: THE FUTURE

To the Right Honourable the Lord Falconer of Thoroton, Lord High Chancellor of Great Britain

PART I
INTRODUCTION

BACKGROUND TO THE REPORT

1.1 On 18 May 2000 the Lord Chancellor[1] appointed Sir Andrew Leggatt to undertake a review of tribunals. The Leggatt report was published on 16 August 2001.[2] The report noted that, in the context of land, property and housing tribunals "there are confusing overlaps of jurisdiction between courts and tribunals, as well as between tribunals" and that "an expert decision-making forum, without overlapping jurisdictions, is a precondition of effective procedural reform".[3]

1.2 The Leggatt report recommended that the Law Commission should be asked to work out "a comprehensive solution" for land, property and housing tribunals, with a view in particular to removing any jurisdictional overlaps and any scope for forum shopping. The project was formally referred to us on 8 November 2002. Our terms of reference were as follows.

> "In the context provided for the future of tribunals by the report of the Leggatt Review of Tribunals[4] and the Modernising Tribunals programme, to review the law relating to the tribunals listed below, including their procedures and composition, and in particular the relationship between the jurisdictions of those tribunals and of the courts or other tribunals, with the aim of making recommendations to ensure that the objectives of the Leggatt Review, as identified in its terms of reference,[5] are met in relation to the work of those tribunals.

[1] The Government announced on 12 June 2003 that the post of Lord Chancellor would be abolished and replaced by the post of Secretary of State for Constitutional Affairs. See press release "Modernising Government – Lord Falconer appointed Secretary of State for Constitutional Affairs" dated 12 June 2003, available on www.number-10.gov.uk. Legislation will be needed to formally abolish the role of Lord Chancellor. References in this report will continue to be to the Lord Chancellor.

[2] Report of the Review of Tribunals by Sir Andrew Leggatt: Tribunals for Users – One System, One Service (August 2001).

[3] Leggatt Report, para 3.30.

[4] Tribunals for Users: One System, One Service (2001) (footnote in original).

[5] The terms of reference were "To review the delivery of justice through tribunals other than ordinary courts of law, constituted under an Act of Parliament by a Minister of the Crown or

The tribunals are as follows:

(1) the Agricultural Lands Tribunal,[6]

(2) the Commons Commissioners,

(3) the Lands Tribunal,

(4) the Leasehold Valuation Tribunal,[6]

(5) the Rent Assessment Committees,[6]

(6) the Rent Tribunal,[6]

(7) the Valuation Tribunal,[6] and

(8) such other related tribunals as the Law Commission and the Lord Chancellor's Department may agree."[7]

1.3 We published our Consultation Paper, *Land, Valuation and Housing Tribunals*, in December 2002. We have been greatly assisted by the 43 responses we received to the consultation from a range of interested parties. We are grateful to consultees

for the purposes of a Minister's functions; in resolving disputes, whether between citizens and the state, or between other parties, to ensure that:

> There are fair, timely, proportionate and effective arrangements for handling those disputes, within an effective framework for decision-making which encourages the systematic development of the area of law concerned, and which forms a coherent structure, together with the superior courts, for the delivery of administrative justice;
>
> The administrative and practical arrangements for supporting those decision-making procedures meet the requirements of the European Convention on Human Rights for independence and impartiality;
>
> There are adequate arrangements for improving people's knowledge and understanding of their rights and responsibilities in relation to such disputes, and that tribunals and other bodies function in a way which makes those rights and responsibilities a reality;
>
> The arrangements for the funding and management of tribunals and other bodies by Government departments are efficient, effective and economical; and pay due regard both to judicial independence, and to ministerial responsibility for the administration of public funds;
>
> Performance standards for tribunals are coherent, consistent, and public; and effective measures for monitoring and enforcing those standards are established; and
>
> Tribunals overall constitute a coherent structure for the delivery of administrative justice.

The review may examine, insofar as it considers it necessary, administrative and regulatory bodies which also make judicial decisions as part of their functions." (footnote in original).

[6] The review will not cover these tribunals in so far as they operate in Wales (footnote in original).

[7] The Law Commission and the Lord Chancellor's Department agreed that the Adjudicator to HM Land Registry would be included within our terms of reference.

for the time spent considering and responding to the questions in the consultation paper. A list of respondents by category is in Appendix C.

1.4 We have also been very much assisted by the members of our advisory group. We have held three meetings of the group since the start of the project. We are very grateful to the group members for their involvement. The members of the advisory group are representatives of the project tribunals and of tribunal users. The members are listed at Appendix D. The members of the group have not been directly involved in the drafting of this report, however, and nothing in it should be taken as necessarily representing their views, or the views of the organisations they represent.

THE UNIFIED TRIBUNALS SERVICE

1.5 Following publication of the Leggatt report, the Government issued a further consultation paper on the Leggatt recommendations in August 2001.[8] A summary of responses received to this consultation was published in March 2003.[9] On 11 March 2003, the Government announced its plans for reform of tribunals.[10] It was announced that "the best way to take tribunal reform forward is to bring most non-devolved central government tribunals together into a single service" within the Lord Chancellor's Department (as it then was).[11] The announcement stated that the new service is initially to be based on the ten largest tribunals,[12] with smaller tribunals joining as appropriate, and that a White Paper, to be published by the Government later this year, would provide more details.

1.6 It was noted during the consultation process that the fact that the Government will be implementing a unified Tribunals Service could result in delays to other shorter term reforms for tribunals, for example, the updating of tribunal procedures. We hope that the Government will give an indication in its White Paper of the likely timetable for the implementation of changes relating to the unified Tribunals Service.

1.7 Following the Government's announcement, the Lord Chancellor's Department confirmed that our project was to proceed according to its original terms of reference, notwithstanding anything in the announcement. We do not therefore

[8] A consultation paper prior to the publication of the Leggatt report was published on 14 June 2000.

[9] The summary of consultation responses is available at www.lcd.gov.uk/civil/tribunals.

[10] Written Answer, *Hansard* (HL) 11 March 2003, col WA168.

[11] The Lord Chancellor's Department became the Department for Constitutional Affairs on 12 June 2003. See press release "Modernising Government – Lord Falconer appointed Secretary of State for Constitutional Affairs" dated 12 June 2003, available on www.number-10.gov.uk. References in this report will be to the Lord Chancellor's Department where the reference is to events that predate the announcement of 12 June 2003, and to the Department for Constitutional Affairs where the reference is to events after this date.

[12] The ten largest tribunals are the Appeals Service, Immigration Appellate Authority, Employment Tribunals Service, Criminal Injuries Compensation Appeals Panel, Mental Health Review Tribunal, Office for Social Security and Child Support Commissioners, Tax tribunals, Special Education Needs and Disability Tribunal, Pensions Appeal Tribunal and Lands Tribunal. Of these, only the Lands Tribunal is within the terms of reference for our review.

consider that any potential options for reform were closed by the content of the Government's announcement.

CONTENT OF THE REPORT

1.8 In Part II we set out our recommendations.

1.9 Part III explains the case for reform in the context of the Leggatt report.

1.10 Part IV sets out our proposed reformed structure for the land, valuation and housing tribunals.

1.11 In Part V we examine some day to day operational matters within the proposed reformed structure.

1.12 Part VI considers the question of jurisdictional overlaps between the courts and the land, valuation and housing tribunals.

1.13 Part VII discusses a possible model for the implementation of our proposed structure in legislation.

ABBREVIATIONS USED IN THE REPORT

1.14 We summarise here for ease of reference the abbreviations used in this report.

(1) "the project tribunals" refers collectively to the eight tribunals within our terms of reference.

(2) "RPTS tribunals" refers collectively to the three tribunals within the Residential Property Tribunal Service.[13]

(3) "PVT" refers to our proposed Property and Valuation Tribunal.

(4) We refer to "the reformed Lands Tribunal" where this is necessary to distinguish it from the Lands Tribunal as it currently operates.

[13] See para 3.11.

PART II
OUR RECOMMENDATIONS

PURPOSE OF THIS PART

2.1 Our proposed scheme for the land, valuation and housing tribunals is best viewed as a whole. Therefore instead of placing our recommendations throughout the main body of the text of this report and summarising them at the end, as is usual in Law Commission reports, in this case we have decided to set out our recommendations at the outset.

2.2 The majority of our proposals in this report relate to the structural reform of the existing land, valuation and housing tribunals. We set out our recommendations for structural reform in the first section of this Part. We then set out further recommendations which raise wider issues but which we think should also be taken into consideration. This Part is not intended to provide a detailed picture of our recommendations or the reasoning behind them. We have provided cross references to the full discussion in footnotes to each paragraph.

RECOMMENDATIONS FOR STRUCTURAL REFORM

2.3 We propose the following structural reforms for the project tribunals.

A reformed structure for land, valuation and housing tribunals

2.4 The current land, valuation and housing tribunals should be unified so as to create a generic Property and Valuation Tribunal (PVT) and a reformed Lands Tribunal.[1]

2.5 The PVT should have jurisdiction to adjudicate on disputes now within the jurisdiction of the Residential Property Tribunal Service tribunals, the Valuation Tribunals and the Agricultural Land Tribunals.[2]

2.6 Appeals from the PVT should be heard by the reformed Lands Tribunal.[3]

2.7 Appeals from the PVT to the reformed Lands Tribunal should be subject to a permission requirement.[4]

2.8 Appeals from the PVT to the reformed Lands Tribunal should not be restricted to appeals on points of law. The reformed Lands Tribunal should be able to hear appeals either by way of review or rehearing.[5]

[1] Paragraphs 4.13 – 4.18.

[2] Paragraphs 4.26 – 4.31.

[3] Paragraph 4.37.

[4] Paragraphs 4.63 – 4.65.

[5] Paragraphs 4.66 – 4.74.

2.9 The reformed Lands Tribunal should have the same range of powers on appeal as the civil courts.[6]

2.10 In addition to its appellate jurisdictions, the reformed Lands Tribunal should have jurisdiction to adjudicate on disputes now within the first instance jurisdiction of the Lands Tribunal and disputes now within the jurisdictions of the Commons Commissioners and the Adjudicator to HM Land Registry.[7]

2.11 Appeals from the reformed Lands Tribunal should be to the Court of Appeal on a point of law only.[8]

2.12 Judicial review of decisions of the PVT should be barred by statute where other remedies have not been exhausted. Judicial review of the reformed Lands Tribunal should be barred by statute.[9]

2.13 Ministerial responsibility for the PVT and the reformed Lands Tribunal should rest with the Secretary of State for Constitutional Affairs.[10]

2.14 The National Assembly for Wales should consider adopting or joining in a unified tribunal structure.[11]

Operation of the reformed tribunals

2.15 The PVT should have a regional structure, which should reflect the regional structure for the unified Tribunals Service.[12]

2.16 The reformed Lands Tribunal should have a President. The PVT should have a President and Regional Chairs.[13]

2.17 The qualification requirements for the President of the reformed Lands Tribunal should be the same as those which now apply in relation to the President of the Lands Tribunal. These qualification requirements should also apply to the President and Regional Chairs of the PVT.[14]

2.18 There should be three different panels of members in the PVT: legal members, professional members and lay members. There should be two different panels of members in the reformed Lands Tribunal: legal members and professional members.[15]

[6] Paragraphs 4.75 – 4.76.

[7] Paragraphs 4.38 – 4.56.

[8] Paragraphs 4.57 – 4.61.

[9] Paragraphs 4.77 – 4.80.

[10] Paragraphs 4.92 – 4.94.

[11] Paragraphs 4.95 – 4.100.

[12] Paragraphs 5.2 – 5.4.

[13] Paragraphs 5.9 – 5.14.

[14] Paragraph 5.14.

[15] Paragraphs 5.18 – 5.19.

2.19 Each member of the PVT should have a "specialism", based on their existing expertise.[16]

2.20 The reformed Lands Tribunal and the PVT should each have a registrar. The clerks in the Valuation Tribunals should become deputy registrars.[17]

2.21 The reformed Lands Tribunal and the PVT should have a single administrative service.[18]

2.22 A Rules Committee should be established to assist in the making of procedural rules for the reformed Lands Tribunal and the PVT.[19]

2.23 There should be a flexible mechanism for the allocation of members to hear cases, which should take into account the membership panels and individual specialisms.[20]

2.24 There should be a case transfer mechanism to enable the transfer of cases from the PVT to the reformed Lands Tribunal and vice versa where appropriate.[21]

2.25 The procedural rules for the PVT and the reformed Lands Tribunal should provide that alternative dispute resolution is to be encouraged in cases before the tribunals where appropriate.[22]

2.26 If our proposals for a unified PVT and a reformed Lands Tribunal are adopted, there should be a departmental review of the fees currently charged in the project tribunals.[23]

2.27 The Government should consider looking at issues relating to the enforcement powers of tribunals.[24]

FURTHER RECOMMENDATIONS

2.28 We also make the following recommendations.

2.29 The Government should consider reviewing the way in which the local government tax system is adjudicated, including the roles of the Valuation Tribunals and the magistrates' court.[25]

[16] Paragraphs 5.20 – 5.25.

[17] Paragraphs 5.30 – 5.33.

[18] Paragraphs 5.34 – 5.36.

[19] Paragraphs 5.42 – 5.46.

[20] Paragraphs 5.47 – 5.54.

[21] Paragraphs 5.55 – 5.60.

[22] Paragraphs 5.61 – 5.64.

[23] Paragraphs 5.65 – 5.68.

[24] Paragraphs 5.69 – 5.71.

[25] Paragraphs 4.32 – 4.36.

2.30 Section 6 of the Agriculture (Miscellaneous Provisions) Act 1964 should be repealed.[26]

2.31 We repeat our earlier recommendation[27] that the Lands Tribunal should have jurisdiction to determine any claim, whether common law or statutory, relating to damage to land or the use of land, where it arises out of substantially the same facts as a compensation claim which has been referred to the Lands Tribunal.[28]

2.32 The PVT and the reformed Lands Tribunal should have a full range of case management powers to deal with occasional problems associated with jurisdictional overlaps. Case management powers should allow the court to refer matters to the tribunals and vice versa where appropriate.[29]

[26] Paragraphs 4.81 – 4.91.

[27] See Towards a Compulsory Purchase Code: (1) Compensation: A Consultative Report, Consultation Paper No 165, paras 8.30 – 8.32 and Proposal 14.

[28] Paragraphs 6.34 – 6.37.

[29] Paragraphs 6.59 – 6.65.

PART III
THE CASE FOR REFORM: THE LEGGATT REPORT

INTRODUCTION

3.1 In this Part we provide an introduction to the tribunals which are within our terms of reference, and set the case for their reform in the context of the principles that emerged from the Leggatt report.

THE PROJECT TRIBUNALS

3.2 The eight tribunals within our terms of reference[1] are as follows:

(1) Adjudicator to HM Land Registry,[2]

(2) Agricultural Land Tribunal,

(3) Commons Commissioners,

(4) Lands Tribunal,

(5) Leasehold Valuation Tribunal,

(6) Rent Assessment Committee,

(7) Rent Tribunal and

(8) Valuation Tribunal.

3.3 We refer collectively to all eight tribunals as the "project tribunals". The Leasehold Valuation Tribunal, Rent Assessment Committee and Rent Tribunal are grouped together within the Residential Property Tribunal Service, and are referred to collectively as the "RPTS tribunals".[3]

3.4 These eight tribunals all have a role that requires them to value or adjudicate on interests connected with land. The project tribunals adjudicate on disputes that can affect people's homes, land and livelihoods.[4] They have exclusive jurisdiction over a large number of issues that would otherwise be decided by the courts. In 2001/2002, the project tribunals decided 42,180 cases between them in England

[1] Our terms of reference are set out in para 1.2 above.

[2] The Adjudicator to HM Land Registry was not specifically included within our terms of reference, but it was agreed by the Law Commission and the Lord Chancellor's Department that the Adjudicator would be included in the review.

[3] See further para 3.11 below.

[4] For example, a Chairman of the Agricultural Land Tribunal told us that in Agricultural Land Tribunals a user's "very livelihood may be at stake."

and Wales.[5] The total number of full and part-time chairs and members within the "pool" of members of these tribunals was 2,603.[6]

3.5 An overview of each of the project tribunals and a full analysis of each tribunal's jurisdiction can be found in our consultation paper.[7] We set out here a brief introduction to each of the tribunals. A diagram of the current structure of the project tribunals is at Appendix A.

Adjudicator to HM Land Registry

3.6 The Adjudicator is a new tribunal established under the Land Registration Act 2002.[8] The office-holder will have jurisdiction to determine certain disputes arising under that Act, most notably disputes between a person who has made an application to the Land Registry registrar and a person who has objected to that application.[9]

3.7 Although no cases have been decided by the Adjudicator, we can have some idea of how this tribunal might work by looking at the adjudication of disputes by the Solicitor to HM Land Registry,[10] who carries out a similar task at present (although the Adjudicator will also have an additional jurisdiction relating to access to the Land Registry Network).[11]

Agricultural Land Tribunal

3.8 The Agricultural Land Tribunals have jurisdiction to decide some disputes between agricultural landlords and tenants, mainly under the Agricultural Holdings Act 1986. The tribunals' caseload is at present declining because, broadly speaking, it has no jurisdiction to hear cases relating to tenancies created on or after 1 September 1995. For tenancies created on or after this date, the main dispute resolution mechanism is arbitration.

Commons Commissioners

3.9 The Commons Commissioners adjudicate on disputes relating to the registration of land as common land or as a town or village green under the Commons

[5] Data from Council on Tribunals Annual Report for 2001/2002 (2002) HC 14. The figures broken down are: Agricultural Land Tribunal 31 cases (England) plus 5 cases (Wales); RPTS tribunals 6,608 cases (England) plus 143 cases (Wales); Valuation Tribunal 33,546 cases (England) plus 1,706 cases (Wales); Commons Commissioners 2 cases (England); Lands Tribunal 139 cases (England and Wales). The potentially misleading nature of the statistics for the Valuation Tribunal is discussed at para 4.32 below.

[6] Data from Council on Tribunals Annual Report for 2001/2002 (2002) HC 14. The figures broken down are Agricultural Land Tribunal 238 (England) plus 37 (Wales); Commons Commissioners 1 (England); Lands Tribunal 5 (England and Wales); RPTS tribunals 371 (England) plus 37 (Wales); Valuation Tribunal 1,608 (England) plus 234 (Wales).

[7] Land, Valuation and Housing Tribunals, Consultation Paper No 170, Part II and appendices B – I.

[8] Section 107.

[9] Section 73.

[10] The Solicitor's jurisdiction was established by the Land Registration Act 1925.

[11] Land Registration Act 2002, Sched 5 para 4.

Registration Act 1965. The Commissioners' limited jurisdiction extends only to disputes which relate to land which was so registered before 2 January 1970. Registrations made after this period are adjudicated by the Commons Registration Authority. The Commons Commissioners do not therefore at present have a large caseload,[12] although there are proposals to increase their areas of work.[13]

Lands Tribunal

3.10 The Lands Tribunal was established by the Lands Tribunal Act 1949. A number of jurisdictions have been allocated to the tribunal over time and it now has a relatively diverse jurisdiction over both first instance and appellate cases. The majority of its first instance cases are land compensation and compulsory purchase cases. The tribunal also hears all appeals from the Leasehold Valuation Tribunal and some Valuation Tribunal appeals.[14]

Tribunals within the Residential Property Tribunal Service

3.11 The Leasehold Valuation Tribunal, Rent Assessment Committees and Rent Tribunals are grouped together under the Residential Property Tribunal Service. The common theme is that the three tribunals have jurisdiction to decide various disputes relating to leasehold property. The tribunals effectively function as a single unit with a common administration.

Leasehold Valuation Tribunal

3.12 The Leasehold Valuation Tribunal has over time emerged as the most important tribunal among the RPTS tribunals and is set to take on a wider range of jurisdictions under the Commonhold and Leasehold Reform Act 2002. The Leasehold Valuation Tribunal mainly hears cases relating to service charges, insurance and the appointment of managers, as well as leasehold enfranchisement cases. Additional jurisdictions under the Commonhold and Leasehold Reform Act 2002 will include a broad power to decide all aspects of service charge disputes, an almost exclusive jurisdiction over a new no-fault right to manage, powers to vary certain leases and some powers in relation to forfeiture.[15]

Rent Assessment Committee

3.13 The Rent Assessment Committees hear appeals from decisions of the rent officer relating to fair rents for regulated tenancies. This jurisdiction is declining as rent

[12] The Commons Commissioners heard 2 cases in 2001/2002. Data from Council on Tribunals Annual Report for 2001/2002 (2002) HC 14.

[13] See the Common Land Policy Statement, published by the Department for Environment, Food and Rural Affairs in July 2002. The proposed new jurisdictions for the Commons Commissioners are to make orders to de-register land, ordering unclaimed common land to be vested in a local authority, to inquire into claims of ownership of common land and to inquire into the ownership of town and village greens.

[14] See para 4.38(2) below for a list of Valuation Tribunal appeals heard by the Lands Tribunal.

[15] Note that the Law Commission's forthcoming consultation paper on Termination of Tenancies for Tenant Default may put forward provisional proposals concerning forfeiture for non-payment of service charges. The consultation paper is due to be published in October 2003. For further information see the Law Commission's website at www.lawcom.gov.uk.

officers are no longer able to issue certificates of fair rent in respect of lettings made on or after 15 January 1989.[16] Rent Assessment Committees also decide cases about open market rents for assured tenancies in certain circumstances.

Rent Tribunal

3.14 The jurisdiction of the Rent Tribunals concerns restricted contracts under the Rent Act 1977. No restricted contracts could be entered into on or after 15 January 1989 except in very limited circumstances,[17] and the Rent Tribunals are as a result now almost non-existent in practice.

Valuation Tribunal

3.15 Valuation Tribunals exercise jurisdiction over valuation decisions relating to local government finance. They mainly deal with disputed valuations of property which have been made for the purpose of council tax or business rates.[18]

THE LEGGATT PRINCIPLES

3.16 The Leggatt report provided the impetus for reform of these tribunals. The report called for an expert decision-making forum for land, property and housing disputes.[19] In the broader context of the tribunal system as a whole, the report set out a number of important principles which should inform the future development of a unified tribunals system.

3.17 The Leggatt report has been accepted by the Government as the way forward for tribunals.[20] Although, of the project tribunals, only the Lands Tribunal is initially to be included within the Government's unified Tribunals Service, the logic of the Leggatt principles applies to all tribunals which offer a service to the public. Our terms of reference require us:

> "In the context provided for the future of tribunals by the report of the Leggatt Review of Tribunals and the Modernising Tribunals programme, to review the law relating to the tribunals listed below, including their procedures and composition, and in particular the relationship between the jurisdictions of those tribunals and that of other courts or tribunals, with the aim of making recommendations to ensure that the objectives of the Leggatt Review, as identified in its terms of reference, are met in relation to the work of those tribunals."[21]

[16] Housing Act 1988. Note that by Chapter V of the Act, certain tenancies will still be regulated under the Rent Act 1977 in limited circumstances.

[17] Housing Act 1988.

[18] Note that a non-departmental public body, the Valuation Tribunal Service, is established by the Local Government Bill, clauses 104 – 105 and Sched 4 (as amended on report in the House of Lords on 17 July 2003).

[19] Leggatt report, para 3.30.

[20] Written Answer, *Hansard* (HL) 11 March 2003, col WA168. See also para 1.5 above.

[21] Footnotes omitted. Our terms of reference are set out in full in para 1.2 above.

3.18 The role of our project is therefore to apply the Leggatt principles to the reform of the project tribunals in the way that will best suit those particular tribunals. The recommendations and the implications of the Leggatt report mean that, unusually for a Law Commission project, we cannot recommend making no change at all.

3.19 We discussed the principles of the Leggatt report in our consultation paper.[22] Given the vital role of the Leggatt principles in informing our recommendations for reform, we set out the principles again below.

3.20 The Leggatt report emphasised the importance of a tribunal system which was independent, coherent, professional, cost-effective and user-friendly. We examine here in more detail the three key principles of independence, coherence and user-friendliness.

Independence

3.21 A key concern of the Leggatt report was that "tribunals currently administered by departments with policy responsibilities or whose decisions are tested in the tribunal, are not sufficiently independent."[23] The report highlighted the fact that tribunals must give users the necessary confidence in their independence and effectiveness. Users must feel that tribunals are genuinely and demonstrably independent.[24] It was said that tribunals will only retain users' confidence in so far as they are seen to demonstrate similar qualities of independence and impartiality to the courts.[25]

3.22 The issue is one of the perceived, rather than the actual, independence of tribunals. The report noted that there is no question of the Government improperly attempting to influence individual decisions. Nevertheless, the report said, it cannot be said with confidence that tribunals are demonstrably independent.[26] The report found that the perception of independence can be hindered by the fact that most tribunals have administrative support, expenses, accommodation and IT support provided by their sponsoring Government departments.[27]

3.23 The importance of reinforcing a perception of independence is clearest in the case of citizen and state tribunals, where the sponsoring Government department is often one of the parties to the case before the tribunal. However, the perception of independence is an important issue in all tribunals, including those which deal with disputes between private parties. The Leggatt report pointed out that independence can be severely compromised if a culture develops in which tribunal members are seen by departments and ministers as an integral part of policy development and the subsequent delivery of policy. This was said to be a possibility when the same department is responsible for developing new initiatives

[22] Land, Valuation and Housing Tribunals, Consultation Paper No 170, Part II.

[23] Leggatt report, para 2.1.

[24] Leggatt report, para 2.3.

[25] Leggatt report, para 2.18.

[26] Leggatt report, para 2.20.

[27] Leggatt report, para 2.20.

and administering the tribunal, and senior members and managers of the tribunal are involved in the development of new policies and legislation as part of the same organisation.[28]

Coherence

3.24 The Leggatt report found that the present set of tribunals has developed in a haphazard way, and that there is a wide variety in the practice and approach of different tribunals, with almost no coherence.[29] The report was concerned that the current systems of administrative support are not meeting the needs of tribunals or users.[30] The report stated that a programme of improvements to information, tribunal procedure, case management, member recruitment, training and IT could not be taken forward in the absence of greater tribunal co-ordination without disproportionate expenditure and duplication of effort.[31]

3.25 The Leggatt vision was "to present the citizen with a single, overarching structure" to make the system clearer and simpler for users. It was said that this would also assist citizens being directly involved in preparing and presenting their own cases.[32] The report highlighted some of the problems caused by tribunals' present isolation from each other: disparities in IT systems, difficulties in retaining suitable staff because of limited career prospects, problems caused by some larger tribunals having under-used accommodation while smaller tribunals are unable to find hearing venues, and general duplication of effort.[33]

3.26 The Leggatt report's response to this lack of coherence was to recommend a Tribunals System, administered by a unified Tribunals Service, which would be under the control of the Lord Chancellor's Department. The report stated that "centralising tribunal administration under a single minister would make it much more likely that there would be a joined-up and modernised service."[34] The report concluded that the assumption of responsibility for all tribunals by the Lord Chancellor instead of by sponsoring departments is the only way in which users can be satisfied of tribunals' independence.[35]

User-friendliness

3.27 The Leggatt report underscored the fact that tribunals exist to serve tribunal users, and that tribunals need to be readily accessible to these users. Two key factors were identified: information for users and independent help and support for them.

[28] Leggatt report, para 2.21.

[29] Leggatt report, para 1.3.

[30] Leggatt report, para 3.4.

[31] Leggatt report, para 3.5.

[32] Leggatt report, para 3.8.

[33] Leggatt report, para 1.18.

[34] Leggatt report, para 2.29.

[35] Leggatt report, paras 2.1 and 2.23.

The view taken in the report was that with good quality information and advice, the need for users to be professionally represented at tribunals should decrease.[36]

THE WAY FORWARD

3.28 The Leggatt report has made an important impact on thinking about the future of tribunals. The report highlighted fundamental ways in which the tribunal system could be improved to ensure it provides a high standard of service of administrative justice to citizens. The main argument of the Leggatt report was that tribunals must be reformed so as to become more coherent, independent and user-friendly, in order to provide the best possible service for the public. This argument has now been accepted by the Government as the way forward for tribunal reform.

3.29 Our objective is to apply the principles of coherence, independence and user-friendliness to the project tribunals. Our proposed reforms are therefore as much as possible based on the application of these key principles to the project tribunals.

[36] Leggatt report, para 4.21.

PART IV
A REFORMED STRUCTURE FOR LAND, VALUATION AND HOUSING TRIBUNALS

INTRODUCTION

4.1 Given the Leggatt principles of independence, coherence and user-friendliness discussed in Part III, this report seeks to apply those principles to reform of the project tribunals. In developing our proposed model we have also been guided by the importance of building on the strengths of the project tribunals, in order to construct a rational structure for them for the future. We see our model as the start of a modernising process that will continue in the tribunals' future development. Our proposed reforms therefore aim to accommodate to a large extent the essential elements of the project tribunals while also looking to their future development and to the addition of new jurisdictions.

4.2 This Part and Part V together set out our proposals for rationalising the project tribunals. In this Part we set out our proposed new structure. In Part V we discuss certain important matters relating to the operation of our proposed tribunals in practice.

4.3 In our consultation paper[1] we discussed three possible options for reform of the project tribunals. These options were intended to be used as a basis for further discussion by consultees with expert knowledge of the day to day operation of the tribunals. The options are set out in full in the consultation paper,[2] but are summarised here for ease of reference.

(1) Option 1: retaining the existing tribunals but rationalising certain features of them. The suggestions for reform were a common appeal route from all of the first tier project tribunals to the Lands Tribunal; rationalisation of the Lands Tribunal's current dual first instance and appellate jurisdiction and formal unification of the Leasehold Valuation Tribunal, the Rent Assessment Committee and the Rent Tribunal.

(2) Option 2: bringing the current first tier project tribunals closer together by having an administratively unified system (the "amalgamated tribunal" option). It was suggested that individual cases could be allocated to "streams" within the system, reflecting the existing divisions between the tribunals, including existing procedural divisions. In this option, tribunal members would continue to hear disputes within their present areas of expertise. Although amalgamated for administrative purposes, the current tribunals would to a large extent retain their jurisdictional distinctions within the amalgamated tribunal.

[1] Land, Valuation and Housing Tribunals, Consultation Paper No 170.

[2] See Consultation Paper No 170, Part III.

(3) Option 3: a completely unified tribunal. This option envisaged the jurisdiction of all the first tier project tribunals being combined into a single tribunal with a single procedural code for all disputes. All tribunal members might eventually be able to hear any type of dispute, although at least initially there would be a degree of "ticketing" of members to ensure that cases continued to be heard by those with relevant expertise.

4.4 In the consultation paper we expressed a provisional preference for option 3. This was on the basis that it appeared to us at that stage that this form of unified tribunal was the best way of delivering the Leggatt vision for the project tribunals.

4.5 The responses to consultation confirmed our view that rationalisation of the current project tribunals into a unified tribunal structure is the way forward. However, the consultation process has persuaded us that this unified structure should be different from the unified or amalgamated tribunal envisaged in our original options 2 and 3.

THE WAY FORWARD: A UNIFIED TRIBUNAL STRUCTURE

Changes to the consultation paper options

4.6 One preliminary issue that we raised in the consultation paper was whether the distinction between party and party disputes and citizen and state disputes was an important one in the context of the project tribunals. We do not now consider this to be a material distinction. The subject matter of the jurisdictions concerned is the most important factor. This view was backed up by consultees.[3] The only way in which these types of disputes might need to be treated differently is that some procedural rules might need to be slightly different. This is discussed in paragraph 5.41 below.

4.7 We do not consider that option 1, essentially keeping the overall structure as it is with some changes, is a realistic option in the context of the post-Leggatt view of tribunals. Consultation responses confirmed that this would be a missed opportunity to improve the project tribunals.[4] To fully deliver the key advantages of the project tribunals to users, more radical reform is needed.

4.8 Options 2 and 3 were somewhat similar to each other. Option 2 suggested a common administration for the tribunals but no further real integration. We do not consider this a meaningful route for reform. Within option 3 we suggested that one possibility might be that eventually every member might be able to hear every case before the unified tribunal. A key issue to come out of consultation was a concern that the vital expertise that currently exists in the project tribunals must be

[3] Of the 15 consultees who raised the issue, 11 did not think the distinction between these two types of tribunals was an important one, with one consultee saying the issue did not arise for them.

[4] For example, the Royal Institution of Chartered Surveyors said that "to preserve the status quo is not an acceptable proposition in the face of shared concerns over the transparency of and access to the tribunals as currently administered." The senior judiciary said that "as matters presently stand, the exceedingly complex network of tribunals in the areas covered by the consultation paper is a source of confusion to the trained lawyer, let alone the layman."

retained. We have recognised that it is crucial to devise a structure which ensures that this expertise is fully retained and sustained in the future. We do not now favour such a radical option and have therefore revised our model for a unified tribunal accordingly.

4.9 Options 2 and 3 essentially consisted of a unified or amalgamated first tier tribunal with a mainly appellate Lands Tribunal. In the consultation paper we noted that the Lands Tribunal currently has jurisdiction over both first instance and appellate cases. Our provisional view was that the first instance cases of the Lands Tribunal should usually be heard in the unified first tier tribunal, only being referred to the Lands Tribunal in certain circumstances through case management procedures. This model envisaged that cases would "leapfrog" to the Lands Tribunal only if a particular case were complex on its own facts. The Lands Tribunal would therefore be a mainly appellate tribunal, with jurisdiction to hear any first instance case only if it were referred up from the unified first tier tribunal. The Lands Tribunal would not, on this view, have its current jurisdiction for both first instance and appellate cases.

4.10 We now accept that this would not be a suitable model for the project tribunals. Our original concern was to ensure that the expertise of the Lands Tribunal should be reserved only for the most complex first instance land, valuation and housing disputes. We had thought to tackle this by using case management systems to refer cases which were complex on their facts up from the unified first tier tribunal to the Lands Tribunal. We have now moved from an entirely case management system for determining complexity to a more jurisdiction based system.[5] We have understood through the consultation process that the Lands Tribunal's first instance jurisdictions in fact almost always deal with complex cases. The legal and factual complexity of the Lands Tribunal's jurisdictions (the majority of which are its first instance jurisdictions)[6] was noted in the Leggatt report.[7] For examples of cases heard by the Lands Tribunal at first instance, see paragraphs 4.40 – 4.43 below. In the model we now propose, the expertise of the Lands Tribunal is still reserved for the most complex first instance disputes, but the question of complexity is mainly determined according to the jurisdiction involved rather than on the facts of any one case.

4.11 The Lands Tribunal has developed a special expertise in these complex first instance cases and a distinguished reputation for its handling of them.[8] We now think that it is necessary to keep the Lands Tribunal in something quite similar to its present form, so that these difficult and specialised first instance cases are heard by those who have the experience and the ability to do so. The members needed to hear these complex first instance cases are also appropriate people to hear land,

[5] There would be, however, additional provision in our model for particularly complex cases which enter the system at the PVT level to be transferred to the Lands Tribunal where appropriate. See paras 5.55 – 5.60.

[6] We do not have precise figures, but the Lands Tribunal has told us that as at June 2003, first instance cases received this calendar year represent over 80% of the total. The Lands Tribunal estimates that at least 75% of judicial time is spent on first instance cases.

[7] Leggatt report Part II, Lands Tribunal section, para 3.

[8] For example, the Country Land and Business Association told us that "the Lands Tribunal is highly respected as expert, efficient and fair by users."

valuation and housing appeals. The present form of the Lands Tribunal was praised in the Leggatt report, which noted with approval the current mixture of first instance and appellate jurisdictions in the tribunal.[9]

4.12 We have therefore changed our structural model for the project tribunals accordingly, and this is discussed below.

The overall structure

4.13 This section is intended to give a picture of the overall structure of our suggested model. The details are discussed in the following sections of this Part and Part V. A diagram showing our proposed structure is at Appendix B.

4.14 The new model envisages two tribunals to deal with land, valuation and housing cases. In our model, a Property and Valuation Tribunal ("PVT") would deal with the majority of cases at first instance. The PVT would comprise the current jurisdictions of the RPTS tribunals, the Valuation Tribunals and the Agricultural Land Tribunals. Appeals from the PVT would be to a reformed Lands Tribunal.

4.15 The reformed Lands Tribunal would largely be based on the current jurisdictions of the Lands Tribunal, with some extensions of its jurisdiction. The tribunal would therefore retain its first instance jurisdictions, and would also be the appellate tribunal for all decisions of the PVT. Our model sees the reformed Lands Tribunal as being analogous to the High Court in having both an original jurisdiction for complex first instance cases and an appellate jurisdiction. The Commons Commissioners and the Adjudicator to HM Land Registry would also be transferred to be brought within the reformed Lands Tribunal. Both the PVT and the reformed Lands Tribunal would be under the control of the Department for Constitutional Affairs.

4.16 Although we suggest that land, valuation and housing cases should be divided between the two reformed tribunals as described, our aim is that the tribunals should be sufficiently flexible to ensure that all cases are heard at the right level. We suggest therefore that the two tribunals should be "porous". This means that cases properly started at one level should be moveable upwards or downwards, as appropriate, taking all relevant factors into account.

4.17 The reformed tribunals must also be sufficiently flexible to ensure that members with sufficient expertise and the right level of expertise hear each case. A new system of member "specialisms" is proposed to ensure that this will happen.

4.18 Our model is slightly different from the broad structure discussed in the Leggatt report, which envisaged a two-tier system with different tribunals for first instance and appellate cases.[10] However, as noted above,[11] the Leggatt report also praised the current mixture of first instance and appellate work in the Lands Tribunal.[12]

[9] Leggatt report, para 6.11.

[10] See the Leggatt report, Chapter 6, Table C, which sets out the proposed structure.

[11] See para 4.11 above.

[12] Leggatt report, para 6.11.

We think that our proposals represent a practical realisation of the Leggatt concept which reflects the realities of the project tribunals.

Advantages of the proposed structure

4.19 We believe that our proposed system would provide direct benefits for users. Users would have a clear contact point for applications to the tribunals and throughout the progression of their case. The system would be sufficiently flexible and adaptable so as to be able to deal with cases fairly, efficiently and economically. In the jurisdictions of the project tribunals it is important that cases are dealt with in this way, given that cases will often determine key questions relating to homes and livelihoods. A unified system should also enable greater resources to be directed to providing user information and publicity, as well as assistance where appropriate.

4.20 There should be advantages for the tribunals themselves. Our proposed structure would provide the opportunity for greater administrative efficiency and economy. We hope that a unified system would enable sharing of training provision, equipment, estate and IT systems. A more unified structure should facilitate recruitment for members and staff and provide clear and attractive routes for career progression.

4.21 A unified system should bring a greater consistency of approach to resolving land, valuation and housing disputes and to the development of the law in these areas. The current tribunals already have some features which enable them to provide some of this consistency of approach. One such feature is the unification in practice of the Leasehold Valuation Tribunals, Rent Assessment Committees and Rent Tribunals under the umbrella of the Residential Property Tribunal Service. Another is the appellate link between the Lands Tribunal and the Leasehold Valuation and the Valuation Tribunals (for some of the Valuation Tribunal's decisions). Our proposed system is intended to build upon and extend the benefits of these structures. A greater consistency of approach could lead to increased user confidence.

4.22 Even if it is felt that the current system works adequately for the present resolution of land, valuation and housing disputes, it is important to look to the future and to create a system that can properly deal with upcoming legislation such as the Commonhold and Leasehold Reform Act 2002, the Land Registration Act 2002 and further into the future, new housing legislation such as that envisaged in the current draft Housing Bill.[13]

4.23 Our structure holds advantages for the future in that it would open up the possibility of adding new jurisdictions to the tribunals where appropriate. The current proliferation of tribunals is a result of new tribunals often having to be created for new legal jurisdictions. A unified land, valuation and housing tribunal system should be able to cope with new work in related jurisdictions. For example

[13] See Housing Bill – Consultation on draft legislation (2003) Cm 5793. The Bill gives jurisdiction for the resolution of disputes to the courts, but some disputes might be suitable for resolution by a unified PVT. This possibility is raised in the consultation document, which invites consultees to comment on whether appeals on housing conditions and licensing should be heard by the county courts or the Residential Property Tribunal Service. See the Housing Bill consultation document, p 20.

some disputes relating to commonhold under the Commonhold and Leasehold Reform Act 2002, although at present within the jurisdiction of the courts, might be suitable for adjudication by a tribunal.[14] These jurisdictions could where appropriate be conferred on our proposed PVT or reformed Lands Tribunal. The reformed tribunal system could also accommodate jurisdictions that are in the pipeline for the current project tribunals, for example the possible new jurisdictions for the Commons Commissioners.[15] We would hope that a unified structure would in the future be a natural choice for dispute resolution in land, valuation and housing legislation.[16] New jurisdictions have often been added to the Lands Tribunal over time.[17] We seek to extend this advantage to a first tier tribunal.

4.24 We have not carried out a detailed financial costs-benefits analysis for our proposals. The detailed quantification of financial costs and benefits is a matter for a Regulatory Impact Assessment by the Government if it decides to adopt our proposals. However, we have heard from a number of consultees that they believe that considerable financial savings could be made and reduced running costs would be possible if there were a unified structure.

4.25 We now turn to consider the structure of the our proposed new tribunal system in more detail.

THE PROPERTY AND VALUATION TRIBUNAL

Jurisdictions of the PVT

4.26 We propose a PVT to deal with the majority of land, valuation and housing cases at first instance. We propose that this tribunal will be responsible for hearing most cases which are currently within the jurisdiction of

(1) the RPTS tribunals,

(2) the Valuation Tribunal and

[14] Leasehold Valuation Tribunals are given new jurisdictions under the Act in relation to leasehold property. Disputes relating to commonhold are at present within the jurisdiction of the courts. Transfer of these jurisdictions to a tribunal is possible by virtue of s 66(3) of the Act, which states that a power to confer jurisdiction on a court includes power to confer jurisdiction on a tribunal.

[15] See the Common Land Policy Statement, published by the Department for Environment, Food and Rural Affairs in July 2002. The proposed new jurisdictions for the Commons Commissioners are to make orders to de-register land, ordering unclaimed common land to be vested in a local authority, to inquire into claims of ownership of common land and to inquire into the ownership of town and village greens.

[16] See also Report of the Committee on Administrative Tribunals and Enquiries (1957) Cmnd 218 (the Franks Report), para 139. The Franks Report, although having some reservations about the amalgamation of tribunals, stated that "we recommend that whenever it is proposed to establish a new tribunal consideration should first be given to the possibility of vesting the jurisdiction in an existing tribunal."

[17] Lands Tribunal Act 1949, s 4 expressly provides for power to add to the jurisdiction of the Lands Tribunal. For a list of the jurisdictions that have been added to the Lands Tribunal over time, see Consultation Paper No 170, Appendix E.

(3) the Agricultural Land Tribunal.

4.27 The RPTS tribunals and the Agricultural Land Tribunals carry out similar types of work. Both hear disputes between landlords and tenants, albeit in different spheres of activity. Both tribunals use lawyers and experts as members to decide cases.[18] We acknowledge, however, that there are some differences between, on the one hand the RPTS tribunals and the Agricultural Land Tribunals and, on the other hand, the Valuation Tribunals. These are as follows.

(1) While the members of the RPTS tribunals and the Agricultural Land Tribunals include lawyers and experts, cases in the Valuation Tribunals are heard solely by lay members (although some members may incidentally have expert qualifications).

(2) The Valuation Tribunals have a significantly larger caseload than the RPTS tribunals and the Agricultural Land Tribunals. In 2001, the Valuation Tribunals decided 33,546 cases, whereas the RPTS tribunals decided 6,608 cases and the Agricultural Land Tribunals 31 cases.[19] The figures for the Valuation Tribunals are, however, rather misleading; many of the cases are simply the tribunals' ratification of settlements by the parties rather than a full adjudicative hearing. This is discussed further at paragraph 4.32 below.

(3) The RPTS tribunals and Agricultural Land Tribunals hear disputes between landlords and tenants. The Valuation Tribunals deal with disputes between citizens and the state.

4.28 The Government's announcement of the unified Tribunals Service referred to the inclusion of "central government" tribunals within the unified service.[20] The Valuation Tribunals might be regarded as local rather than central government tribunals, as they adjudicate on questions relating to local government finance (though they are dealing with appeals against decisions taken by the Valuation Office Agency, an executive agency of the Inland Revenue). It is possible therefore that the Government might decide that the Valuation Tribunals will not be included within the unified Tribunals Service, at least initially.

4.29 We would argue, however, that the Valuation Tribunals are sufficiently similar to the other project tribunals to be included within a unified system. The tribunals are linked by the fact that they hear cases related to property, housing and the valuation of land. Like the RPTS tribunals, the Valuation Tribunals decide questions relating to the valuation of property (although the RPTS tribunals also

[18] The experts in the RPTS tribunals are surveyors and valuers. Lay members also sit in the RPTS tribunals. The wing members in the Agricultural Land Tribunals do not necessarily have qualifications which mark them out as experts, but are chosen for their expertise in agriculture.

[19] See the Council on Tribunals Annual Report 2001/2002. The data relates to England only (and not Wales). Although the Agricultural Land Tribunal heard only 31 cases in 2001/2002, 296 cases were pending.

[20] Written Answer, *Hansard* (HL) 11 March 2003, col WA168. The Government's announcement is discussed at para 1.5 above.

hear cases which are not about valuation matters). Valuation cases in the RPTS tribunals and the Valuation Tribunal are broadly concerned with similar issues, and members of both tribunals use similar skills in deciding valuation questions. The Valuation Tribunals are closely connected to the overall scheme of the project tribunals in that, like the Leasehold Valuation Tribunals, there is an appellate route to the Lands Tribunal.[21]

4.30 The Valuation Tribunals are not the only one of the project tribunals to hear disputes between citizens and the state. The majority of the Lands Tribunal's cases, that is its first instance compensation and compulsory purchase cases, are disputes between the citizen and the state. The list of jurisdictions for each of the project tribunals is not closed. It would be possible for citizen and state jurisdictions to be added either to the project tribunals or to a PVT and a reformed Lands Tribunal. It has been suggested that some jurisdictions under the Government's new Housing Bill might be suitable for adjudication by the RPTS tribunals.[22] The Bill makes provision (among other matters) for appeals against local authority decisions relating to the licensing of houses in multiple occupation.[23] If the RPTS were to have this jurisdiction, the tribunal would be adjudicating on disputes between citizens and the state.

4.31 It can also be argued that the Leggatt principles for the rationalisation of tribunals should apply to the Valuation Tribunals as much as to any other tribunal. The Valuation Tribunals and their users would also benefit from a more coherent and independent structure. Given these arguments, we think it right to include the Valuation Tribunals within our new system.

Operation of the Valuation Tribunals

4.32 The differences between the Valuation Tribunals and the other project tribunals do, however, raise questions about the operation of the Valuation Tribunals. It has been noted that Valuation Tribunals hear a comparatively large number of cases.[24] However, the number of cases may be deceptive. This is because of the procedure by which proposals made for alteration of the non-domestic rating list or council tax valuation list are automatically referred to the Valuation Tribunal as an appeal if they are not settled within the time period specified by legislation.[25] This

[21] Appeal from the Valuation Tribunal is to the Lands Tribunal in non-domestic rates and drainage rates cases. In relation to non-domestic rates see the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 (SI 1993 No 291), reg 47(1) and the Non-Domestic Rating (Chargeable Amounts) (England) Regulations 1999 (SI 1999 No 3379), reg 37(4). In relation to drainage rates, see the Land Drainage Act 1991, s 46(6) and the Land Drainage Act 1976, s 79(5). Appeals from the Leasehold Valuation Tribunal are to the Lands Tribunal under the Commonhold and Leasehold Reform Act 2002, s 175.

[22] See para 4.22 footnote 13 above.

[23] Housing Bill, cl 75. See Housing Bill – Consultation on draft legislation (2003) Cm 5793.

[24] See para 4.27 above.

[25] Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 (SI 1993 No 291), reg 4A and reg 12 and the Council Tax (Alteration of Lists and Appeals) Regulations 1993 (SI 1993 No 290), reg 5 and reg 13. The relevant time period is six months in council tax cases and three months in non-domestic rating cases. In relation to non-domestic rates, the Valuation Office Agency has from 1 April 2000 introduced a "programming" system which shows ratepayers the time frame within which they expect to deal with proposals. The

procedure is intended to act as a catalyst for the parties to negotiate a settlement, and the majority of cases are settled before the hearing date.[26] In 2001, the Valuation Tribunals received 386,307 cases, of which 328,014 were withdrawn and 33,546 decided following a hearing.[27] The authors of the Leggatt report attended a Valuation Tribunal hearing, and they comment that the majority of the tribunal's time was taken up in ratifying negotiated settlements or noting withdrawn appeals. The Leggatt report argued that the ratification of documents is not a good use of a tribunal's time.[28] It could be said that the automatic listing of cases before the Valuation Tribunals gives them more of an administrative than an adjudicative function. Arguably this is not the proper function of a tribunal.

4.33 A second issue related to Valuation Tribunals which is raised by comparing them to the RPTS tribunals and the Agricultural Land Tribunals is their wholly lay membership. Although the RPTS tribunals also use some lay members, a wholly lay membership is anomalous in the context of the project tribunals, and to a large extent in the wider world of tribunals.[29] However, any alteration to the type of membership of the Valuation Tribunals would be a policy matter for Government and we make no recommendation about this. We consider our proposed system to be sufficiently flexible to be able to accommodate both lay and expert tribunal members. This is discussed further in Part V of this report.

4.34 We have also noted some wider issues relating to Valuation Tribunals and the resolution of local government finance disputes. We noted in our Consultation Paper[30] that there are different forums for the resolution of local government taxation disputes as follows.

(1) Disputes as to the *contents* of non-domestic rating valuation lists are heard by the Valuation Tribunal with appeals heard by the Lands Tribunal.[31]

(2) Disputes as to *liability* in relation to non-domestic ratings are heard by the magistrates' courts with appeals heard by the High Court.[32]

Valuation Office Agency's 2005 Rating Revaluation "Right First Time" initiative may reduce appeals. For further information on this initiative see David Hudson, "Don't play politics with the rates" (2003) EG 107.

[26] See the Leggatt report, Part II, Valuation Tribunals section, para 2.

[27] Council on Tribunals Annual Report 2001/2002.

[28] Leggatt report, Part II, Valuation Tribunals section, para 6.

[29] The General Commissioners of Income Tax are similar to the Valuation Tribunals in that members are unpaid and there are no qualification requirements for members. The Government's consultation paper on tax tribunals questions whether some of the work now handled by General Commissioners needs to be heard by a panel including a lawyer. See Tax Appeals Consultation Paper (Lord Chancellor's Department, March 2000), Question 5 and following text.

[30] Consultation Paper No 170, para 5.16.

[31] Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 (SI 1993 No 291) and the Non-Domestic Rating (Chargeable Amounts) Regulations 1994 (SI 1994 No 3279).

[32] Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations (SI 1989 No 1058), reg 12.

(3) This can be contrasted with council tax, where disputes both as to the contents of valuation lists and as to liability are heard by the Valuation Tribunal, with appeals heard by the High Court.[33]

4.35 A case might be argued for giving Valuation Tribunals jurisdiction to hear disputes about liability for non-domestic ratings as well as about the contents of the list, in line with council tax cases, with appeals to the Lands Tribunal. We note that the jurisdiction of the Valuation Tribunals may be extended in relation to non-domestic rating by proposed provisions in the Local Government Bill.[34] If implemented, these provisions would mean that non-compliance with a statutory notice requesting information from a ratepayer about rental values would give rise to a civil penalty to be imposed by the valuation officer with an appeal to the Valuation Tribunal. This would replace the current criminal sanction imposed by the magistrates' court.[35]

4.36 Given the factors noted above, we recommend that the Government considers reviewing the way in which the local government tax system is adjudicated, including the roles of the Valuation Tribunals and the magistrates' courts.

Appeals from the PVT

4.37 In our model, appeals from all cases within the PVT would be heard by the reformed Lands Tribunal. The proposed mechanics of the appeal process are discussed at paragraphs 4.62 – 4.74 below.

REFORMED LANDS TRIBUNAL

Jurisdictions of the reformed Lands Tribunal

4.38 Our proposed model for the project tribunals has a second tier tribunal based largely on the current jurisdictions of the Lands Tribunal. As explained in paragraphs 4.10 – 4.12, we no longer think it would be appropriate to have a mainly appellate Lands Tribunal. We propose that the reformed Lands Tribunal should exercise both a first instance and an appellate jurisdiction, as well as some additional jurisdictions. In summary, we envisage that the reformed Lands Tribunal would have jurisdiction in the following types of cases.

(1) The Lands Tribunal's current first instance jurisdictions.

[33] The jurisdiction for disputes about liability comes from the Local Government Finance Act 1992, s 16. The jurisdiction for disputes about the content of valuation disputes comes from the Council Tax (Alteration of Lists and Appeals) Regulations 1993 (SI 1993 No 290).

[34] Local Government Bill, cl 71 confers jurisdiction on the Valuation Tribunal (as amended on report in the House of Lords on 17 July 2003).

[35] Local Government Finance Act 1988, Sched 9 para 5, as amended.

(2) The Lands Tribunal's current appellate jurisdictions over decisions of the Leasehold Valuation Tribunal and non-domestic rates, drainage rates and "old rates"[36] decisions of the Valuation Tribunal.

(3) The new appellate jurisdictions that we propose for the reformed Lands Tribunal, that is appellate jurisdiction over the other cases which would be heard in the PVT. These are discussed in paragraph 4.46 below.

(4) The jurisdictions of the Adjudicator to HM Land Registry.

(5) The jurisdictions of the Commons Commissioners.

4.39 These jurisdictions are each discussed in more detail below.

First instance Lands Tribunal jurisdictions

4.40 The Lands Tribunal currently has jurisdiction to hear a number of cases at first instance. These are mostly compulsory purchase and other land compensation cases. Other first instance jurisdictions of the Lands Tribunal relate to blight notices, restrictive covenants, taxation disputes, arbitration and rights of light.[37] In our scheme, the reformed Lands Tribunal would have jurisdiction to hear these cases, as the Lands Tribunal does now. This recognises the importance of there being an appropriate level of expertise for the complex and heavyweight compensation cases that largely make up the Lands Tribunal's first instance jurisdictions.

4.41 A large proportion of the Lands Tribunal's first instance jurisdictions concern compensation for compulsory purchase. These cases frequently involve difficult points of law and valuation principle, and substantial sums of money are often involved. The Lands Tribunal has told us that parties are represented by Counsel in the majority of cases and about a quarter of parties are represented by leading Counsel. Recent cases decided under the compulsory purchase jurisdiction highlight some of the factors which make these heavyweight cases which should stay with the reformed Lands Tribunal. For example, in *Yorkshire Traction Co Ltd v South Yorkshire Passenger Transport Executive,*[38] the compensation awarded was £782,776 and the case involved questions of proper valuation methods and principles. In *Christos v Secretary of State for the Environment, Transport and the Regions,*[39] £618,945 compensation was awarded and the Lands Tribunal decided legal questions relating to contract and estoppel as well as questions about the effect of a defect in legal title to property on valuation and the effect of damage to the property post-valuation.

[36] These "old rates" cases are the residual jurisdiction of the old Local Valuation Courts, which was transferred to the Valuation Tribunal by the Valuation and Community Charge (Transfer of Jurisdiction) Regulations 1989 (SI 1989 No 440).

[37] A full list of the Lands Tribunal's first instance jurisdictions can be found in Consultation Paper No 170, Appendix E, Part II.

[38] LT ref ACQ/191/2000.

[39] LT ref ACQ/69/2001.

4.42 The Lands Tribunal's other first instance jurisdictions will also usually require the special expertise that the tribunal has developed. The Lands Tribunal's restrictive covenant jurisdiction,[40] for example, is relatively technical and complex. In this jurisdiction, those who are entitled to the benefit of the restrictive covenant in question can object to its modification or discharge. Disputes as to whether objectors are so entitled are determined as preliminary issues. This requires a detailed understanding of land law. Although the majority of these restrictive covenant cases are decided by the President without a hearing, where a hearing is needed detailed and technical issues relating to the statutory grounds for discharge and modification of restrictive covenants may need to be considered.[41]

4.43 We recognise that although cases within the Lands Tribunal's first instance jurisdiction are usually complex, there will sometimes be cases that are less complex, or are of a lower monetary value. An example of such as case might be the recent Lands Tribunal decision *Nesbitt v National Assembly for Wales.*[42] This was a claim under the Land Compensation Act 1973 for compensation for the deprecation in value of a house caused by a new motorway bridge. The compensation awarded was £6,250. The case was heard under the Lands Tribunal's simplified procedure.[43] Within our proposed scheme, simpler or lower value cases might be more suitably heard in the PVT. We therefore suggest a mechanism which would allow such cases to be transferred from the reformed Lands Tribunal to the PVT (or vice versa in appropriate circumstances). This is discussed in paragraphs 5.55 – 5.60 below.

Appellate jurisdictions

4.44 The Leggatt report noted that the current structure of appeal routes from tribunals developed alongside the unstructured growth of the tribunals themselves, and, as a result, it is a haphazard system. The report saw a need to simplify the system and to make sure that appeal routes are rational and clearly defined.[44] We agree. A coherent and user-friendly tribunal system needs a single, rational route of appeal. A single appellate tribunal would also be able to develop the law in a consistent manner across the range of land, valuation and housing matters, and this should in turn assist the consistency of decisions in the first instance tribunal. Consultees supported the creation of a single route of appeal,[45] including those commenting from the point of view of the RPTS tribunals and the Valuation Tribunals, in which there are presently divergent routes of appeal for different jurisdictions.[46]

[40] This jurisdiction arises under the Law of Property Act 1925, s 84.

[41] See, for example, *Marcello Development Ltd's Application* [2002] RVR 146.

[42] LT ref LCA/139/2001.

[43] See the Lands Tribunal Rules 1996 (SI 1996 No 1022), r 28.

[44] Leggatt report, paras 6.8 and 6.9.

[45] Of the 26 consultees who discussed the issue, 24 thought that there should be a single route of appeal from the first tier project tribunals.

[46] The Inland Revenue said that "it is odd that non-domestic rating appeals generally proceed from local Valuation Tribunals to the Lands Tribunal by way of a rehearing, whilst council tax appeals proceed from the local Valuation Tribunals direct to the High Court on a point of

4.45 We suggested in our consultation paper that this single route of appeal should be to the Lands Tribunal.[47] The Lands Tribunal is a respected and expert tribunal which is already experienced in hearing appeals from some of the project tribunals. It regularly hears complex cases including those which involve difficult questions of law and valuation principle. The Leggatt model is for appeals to be heard within the tribunal system rather than by the courts (with a few exceptions). For these reasons, we think that the single route of appeal should be to the Lands Tribunal. This was supported by the majority of consultation responses.[48]

4.46 In our scheme, the reformed Lands Tribunal would hear appeals from all cases within the jurisdiction of the PVT. As noted above,[49] the Lands Tribunal currently hears appeals from all cases heard at first instance in the Leasehold Valuation Tribunal, and non-domestic rates, drainage rates and "old rates" cases heard by the Valuation Tribunal. Legislation would therefore be needed to transfer the appellate jurisdiction to the reformed Lands Tribunal for appeals from the following first instance jurisdictions:

(1) Valuation Tribunal council tax and community charge jurisdictions,[50]

(2) All Rent Assessment Committee jurisdictions,

(3) All Rent Tribunal jurisdictions and

(4) All Agricultural Land Tribunal jurisdictions.

4.47 We mentioned in paragraph 4.44 above the role of the reformed Lands Tribunal in promoting consistency across the range of land, valuation and housing disputes. The Leggatt report submitted that that there would be greater consistency and coherency in a unified Tribunal System if there were systematic arrangements for appellate tribunals to be able to set precedents.[51] The report noted that in practice the Immigration Appellate Authorities and the Social Security and Child Support Commissioners have already moved towards selecting particularly important decisions as carrying authority.[52]

law only." The Residential Property Tribunal Service "would welcome the creation of a common route of appeal for all jurisdictions dealt with by the RPTS."

47 Consultation Paper No 170, para 4.24.

48 Of the 24 consultees who thought there should be a single route of appeal, 17 expressed a clear preference that this should be to the Lands Tribunal.

49 Paragraph 4.38.

50 These jurisdictions are those conferred by the following legislation: Local Government Finance Act 1988, s 23; Local Government Finance Act 1992, s 16; Local Government Finance Act 1992, Sched 3 para 3(1); Council Tax (Alteration of Lists and Appeals) Regulations 1993 (SI 1993 No 290), reg 8(3); Council Tax (Alteration of Lists and Appeals) Regulations 1993 (SI 1993 No 290) reg 13; Local Government Finance Act 1988, Sched 4A para 4(1) together with Local Government Finance Act 1992, s 17. See Consultation Paper No 170, Appendix I for further details.

51 Leggatt report, paras 6.17 – 6.26.

52 Leggatt report, para 6.20.

4.48 The Leggatt report recommended that there should a system in which some (not all) appellate tribunal cases were designated as binding,[53] with final decisions about binding precedents being taken by the President of the appellate tribunal concerned (in conjunction with the Tribunals Board proposed in the Leggatt report).[54] The report preferred a system in which cases were selected to have precedent status after they had been heard, rather than cases being selected in advance of the hearing and then being heard by a special panel.[55]

4.49 We think that a formal system of precedents would have a useful role to play in our proposed PVT and reformed Lands Tribunal. We believe that it would give useful guidance to the PVT and promote consistency of decision-making if the Lands Tribunal were able to designate some of its appellate decisions as binding precedents. If the Leggatt recommendation for a system of precedents is implemented by the Government for a unified Tribunals Service, then we think that whatever system is adopted should also apply to our proposed PVT and reformed Lands Tribunal.

The Adjudicator to HM Land Registry and the Commons Commissioners

4.50 In the consultation paper, our options 2 and 3 included all of the first instance tribunals within the amalgamated or unified tribunal. We have since reconsidered the position of the Adjudicator and the Commons Commissioners. In the light of consultation responses, we take the view that the work of these smaller tribunals requires a different level of specialist knowledge to that of the tribunals which we propose should be within the PVT.[56] In our opinion, cases before the Adjudicator and the Commons Commissioners require an in-depth knowledge of property law and more specifically the law relating to registered land and the law of commons respectively.

4.51 The main jurisdiction of the Commons Commissioners is to decide on disputed registrations of land as common land or as town or village greens.[57] To do this they must decide whether land falls within the legal definition of common land or a

[53] Leggatt report, para 6.26.

[54] Leggatt report, para 6.26. The purpose of the Tribunals Board which the Leggatt report recommended is to act as the council directing the Tribunals System. The report recommended that the Board should comprise the chief personnel in the Tribunals System and should be responsible for matters including qualifications for chairs and members, overseeing the appointment of members and co-ordinating training. On the Tribunals Board, see further the Leggatt report, para 6.40.

[55] Leggatt report, para 6.25.

[56] For example, the Lands Tribunal said that the jurisdiction of the Commons Commissioners and the Adjudicator are so specialist that it would not be appropriate for ordinary members of first tier tribunals to hear cases within these jurisdictions. The senior judiciary said that the Adjudicator will perform a highly specialised role in the regulation of dealings in land, and that the proposed route of appeal from a unified first tier tribunal would not be appropriate. The senior judiciary did not think that either the Commons Commissioners or the Adjudicator should be brought within a unified first tier tribunal.

[57] Commons Registration Act 1965, s 6(1).

town or village green.[58] This can raise difficult factual and legal issues. A recent example is *Llangenith Manors Ltd v Chief Commons Commissioner*,[59] an appeal from the Commons Commissioners to the High Court on the question of whether land was correctly registered as a village green. The High Court judge reviewed the very detailed evidence that the Commissioner had heard from a number of witnesses regarding the exact nature and history of activities that had taken place on the land in question in order to decide whether there was a "customary" green which had been enjoyed for time immemorial or a "prescriptive" green over which a right had been enjoyed as of right for 20 years.[60] In relation to these two legal types of village green it was also necessary to consider the nature of the custom, to have proof of certainty of the locality in which the custom was alleged to exist and proof of certainty of the persons enjoying the custom. The High Court judge found that the Commons Commissioner had erred in law and that there was no strict and proper proof of a village green. The House of Lords has also recently decided a number of issues relating to the legal definition of a village green in the important case *R v Oxfordshire CC ex parte Sunningwell Parish Council*.[61]

4.52 The main role of the Adjudicator will be to hear contested applications for registration, where the registrar of the Land Registry is unable to dispose of these objections by agreement.[62] As the Adjudicator has not yet decided any cases, we cannot with certainty say whether the tribunal will deal with complex questions that should be decided within the reformed Lands Tribunal proposed in our scheme. However, the Solicitor to HM Land Registry carries out a similar role in dispute resolution at present as the Adjudicator will once the tribunal is established. Although the Adjudicator will not be deciding precisely the same range of disputes,[63] we can gain some idea of the Adjudicator's work by looking at the cases the Solicitor has decided.

4.53 The cases heard by the Solicitor to HM Land Registry can be technical and complex. Cases often arise out of disputed first registrations, adverse possession

[58] See Commons Registration Act 1965, s 22(1). This section has now been amended by the Countryside and Rights of Way Act 2000, s 98(3). This essentially relaxed the definition of a town or village green.

[59] [2001] All ER 381 (Chancery Division). The amendments to the Commons Registration Act 1965 brought in by the Countryside and Rights of Way Act 2000 do not affect this case as the original decision was taken before that Act came into force.

[60] The question has previously arisen of whether the relevant period is 20 years immediately preceding either the passing of the Act or the application for registration of the right. In *Windsor Corpn v Mellor* [1975] 1 Ch 380, the Court of Appeal stated that it referred to 20 years user before the passing of the Act.

[61] [2001] 1 AC 335. This case does not directly concern the Commons Commissioners, as the application for registration was made after the date of 2 January 1970, and therefore the Commons Commissioners did not have initial jurisdiction. One of the important issues decided in the *Sunningwell* case related to use "as of right" for the prescriptive establishment of village greens. On this see also *R (on the application of Beresford) v Sunderland CC* [2001] EWCA Civ 1218; [2002] QB 874 (Court of Appeal).

[62] Land Registration Act 2002, s 73.

[63] The Adjudicator will have a new jurisdiction to decide disputes about network access agreements. In addition, the Land Registration Act 2002 makes some substantive changes to registered property law which will mean that the Adjudicator's jurisdictions will differ substantively to a certain extent.

claims and claims for rectification of the register. They often involve a determination of the correct legal title to the land by examining and interpreting conflicting conveyancing documents which date back over a number of years.[64] The Solicitor and his Deputies have in recent cases considered the tests for adverse possession;[65] the differing legal authorities on the effect of adverse possession by a tenant;[66] the legal presumptions about the existence of boundaries[67] and questions about easements.[68] Some of the issues that arise in the cases could also be decided in the High Court.[69] We think that the Adjudicator's cases would be appropriately dealt with at the level of the reformed Lands Tribunal.

4.54 The jurisdictions of the Commons Commissioners and the Adjudicator are somewhat similar to some of the complex and specialised areas of property law which the Lands Tribunal deals with at present. This is particularly noticeable in the sphere of restrictive covenants decisions, in which the Lands Tribunal often has to decide technical property law matters.[70]

4.55 We suggest that the posts of Adjudicator and Chief Commons Commissioner should be preserved as distinct specialist roles within the reformed Lands Tribunal. Within the Lands Tribunal, there would be one individual with the title of Chief Commons Commissioner and one individual with the title of Adjudicator. The tribunal could sit as the Commons Commissioners or as the Adjudicator as relevant when hearing cases currently within these jurisdictions. However, our scheme is sufficiently flexible that other members of the Lands Tribunal (who we would expect to be lawyer members in this case) could over time gain experience in these two jurisdictions and hear some of these cases if necessary. Conversely, the Chief Commons Commissioner and the Adjudicator could hear other cases within the jurisdiction of the Lands Tribunal where appropriate. This would make full use of the expertise of the members of the Lands Tribunal and could potentially be an efficient use of resources, while increasing the range of work available to Lands Tribunal members.

4.56 The transfer of the Adjudicator and the Commons Commissioners to the Lands Tribunal would probably have some resource implications for the Lands Tribunal as currently constituted. We imagine that if necessary judicial, administrative and other resources would be transferred to the Lands Tribunal.

[64] See, for example, *Land Authority for Wales v R M Williams, D L Prothero and O K Parker* (June 1998, appealed to the High Court on the question of costs); *Glover and Glover v Hiles* (June 1998); *D C Smith v R F Underwood and J M Underwood* (June 1999).

[65] See *J E Ludlow and S P Ludlow v Mayo Land Co Ltd* (October 2002); *Brierley v Wroe*; *Jack Adams v the Trustees of the Michael Batt Charitable Trust* (October 2000), appealed to the High Court, reported at [2001] 2 EGLR 92.

[66] *Jack Adams v the Trustees of the Michael Batt Charitable Trust* (October 2000). Appealed to the High Court, reported at [2001] 2 EGLR 92.

[67] *C H Gibson and B J Gibson v I H Carnegie and J H Carnegie* (Land Registry transcript).

[68] *Williams v Bateman* (Land Registry transcript).

[69] Especially cases relating to adverse possession. For a notable adverse possession case in the courts see *J A Pye (Oxford) Ltd v Graham* [2003] 1 AC 419; [2002] UKHL 30.

[70] See, for example, *Marcello Development Ltd's Application* [2002] RVR 146; *Adnan Azfar's Application* LT ref LP/10/2000.

Appeals from the reformed Lands Tribunal

4.57 The appeal route from decisions of the Lands Tribunal is to the Court of Appeal on a point of law.[71] This would continue to be the appeal route from the reformed Lands Tribunal in our scheme.

4.58 This would mean that appeals from the Commons Commissioners and the Adjudicator, which are currently to the High Court,[72] would instead be to the Court of Appeal. We do not think that this would substantially increase the workload of the Court of Appeal. There are very few appeals at present from the Commons Commissioners to the High Court. The Chief Commons Commissioner told us in his consultation response that he was aware of only one such appeal in recent years.[73] Although we cannot yet know the number of appeals there would be from the Adjudicator, there are very few appeals from the Solicitor to HM Land Registry and his Deputies, who perform a similar role at present, to the High Court. The Land Registry has told us that in the last five years there have been six such appeals.[74] We would not therefore anticipate a large number of appeals from the Commons Commissioners and the Adjudicator to the Court of Appeal in our proposed system.

4.59 Our proposals would also result in some changes to the present basis of appeal from the Commons Commissioners and the Adjudicator. As noted in paragraph 4.57 above, appeals from the Lands Tribunal to the Court of Appeal are on a point of law only. Appeals from the Commons Commissioners to the High Court are also on a point of law only.[75] Appeals from the Adjudicator to the High Court under the present law are not restricted to appeals on a point of law, other than appeals made in relation to the Land Registry Network.[76] We do not think that this change to the basis of appeal from the Adjudicator is problematic. The Adjudicator will be a professional expert, sitting in a professional and expert second tier tribunal. We do not consider an appeal on the facts would be appropriate in these circumstances.

4.60 In our earlier report on land registration we recommended that appeals from the Adjudicator should go to the High Court and that they should not be restricted to appeals on a point of law, other than appeals made in relation to the Land Registry Network. We also noted, however, that "these rights of appeal may have to be

[71] Lands Tribunal Act, s 3.

[72] Commons Registration Act 1965, s 18; Land Registration Act 2002, s 111.

[73] This case is *Llangenith Manors Ltd v Chief Commons Commissioner* [2001] All ER 381 (Chancery Division), discussed at para 4.51 above.

[74] Telephone conversation with HM Land Registry. Five appeals were against decisions made following a hearing and one was against a decision to impose a sanction for failure to comply with directions given in preparation for a hearing.

[75] Commons Registration Act 1965, s 18(1).

[76] See Land Registration Act 2002, s 111(1) and s 111(2). For appeals relating to the Land Registry Network, see Land Registration Act 2002, Sched 5 para 4. The reason for the different bases of appeal is set out in Land Registration for the 21st Century: A Conveyancing Revolution (2001) Law Com No 271, para 16.23(2) which states that appeals in relation to the Land Registry Network are second appeals, and it is not considered appropriate to permit unlimited rights to make a second appeal.

reconsidered in the light of any recommendations that may be made by Sir Andrew Leggatt in his forthcoming Review of Tribunals."[77]

4.61 We would not expect there to be a large number of second appeals to the Court of Appeal. Permission is required to appeal from the Lands Tribunal to the Court of Appeal.[78] The Court of Appeal seems likely to adopt a strict test for the granting of permission in an appeal from an expert tribunal.[79]

APPEALS FROM THE PVT TO THE REFORMED LANDS TRIBUNAL

4.62 As noted in paragraph 4.37 above, in our proposed scheme, all appeals from the PVT would be heard by the reformed Lands Tribunal. This section sets out the proposed mechanics of that route of appeal.

The permission requirement

4.63 The current requirements for permission to appeal from the first tier project tribunals to the Lands Tribunal vary depending on which tribunal is in question. Permission is not required to appeal non-domestic rating cases from the Valuation Tribunals. Permission is required to appeal any decision of the Leasehold Valuation Tribunal.[80]

4.64 We think there should be a consistent permission requirement for appeals from the PVT to the Lands Tribunal in our proposed system. A permission requirement is consistent with the current practice in the civil courts.[81] Either the Lands Tribunal or the PVT should have the power to grant permission.

[77] Land Registration for the 21st Century: A Conveyancing Revolution (2001) Law Com No 271, para 16.23(1).

[78] *Girls Day School Trust (1872) v Dadak* [2002] 1 P&CR 4; [2001] EWCA Civ 380. Permission was required as the Lands Tribunal Act, s 3(4) did not specifically state whether permission was required or not, and it therefore could not amount to a statutory provision excluding Lands Tribunal cases from the normal rule under the Access to Justice Act, s 54(1) that permission was required.

[79] See Access to Justice Act 1999, s 55 and CPR 52.13(2) which state that in second appeals the appeal cannot be heard unless the appeal would raise an important point of principle or practice or there is some other compelling reason for the Court of Appeal to hear it. Although this section does not apply to appeals from tribunals, the stricter test for permission was applied to an appeal from an expert tribunal (a Social Security Commissioner) in *Cooke v Secretary of State for Social Security* [2002] 3 All ER 279; [2001] EWCA Civ 734.

[80] Commonhold and Leasehold Reform Act 2002, s175(2). Permission can be granted either by the Leasehold Valuation Tribunal or by the Lands Tribunal. Note that the current permission requirements are different pending the coming into force of the Commonhold and Leasehold Reform Act 2002.

[81] The Access to Justice Act, s 54 enables rules of court to provide that any right of appeal to a county court, the High Court and the Court of Appeal may be exercised only with permission. By CPR 52.3(1), permission to appeal is required for all appeals from the decision of a judge in a county court or the High Court (with a couple of exceptions that do not need to be discussed here). By CPR 52.3(6), permission to appeal will only be given where the court considers the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard.

4.65 The Lands Tribunal Rules[82] do not prescribe how the Lands Tribunal is to exercise its discretion in deciding whether to allow permission to appeal. The Lands Tribunal's Practice Directions[83] state that permission will only be granted if it appears to the Lands Tribunal that there are reasonable grounds for concluding that the decision of the Leasehold Valuation Tribunal may have been wrong because it wrongly interpreted or wrongly applied law or valuation principle, or that there was a substantial procedural defect. Alternatively, the Lands Tribunal may grant permission to appeal if the points at issues are of potentially wide application. It is for the applicant to satisfy the Lands Tribunal that permission should be given, and the tribunal takes into account the principles of proportionality in deciding whether it should do so. We do not propose any change to this approach. We think that a similar approach should be adopted by our proposed PVT and be published in Practice Directions. We expect that over time case law would develop which would give further guidance on the granting of permission.

Basis of appeals

4.66 In the consultation paper we discussed whether appeals from a unified first tier tribunal should be rehearings on the facts or appeals on points of law only.[84] We provisionally took the view that appeals from decisions of lay tribunals should be heard as rehearings on the facts while appeals from expert tribunals should be on a point of law only.

4.67 We now consider that none of the appeals from the PVT to the Lands Tribunal should be restricted to points of law. This is different from the basis of appeal recommended in the Leggatt Report, which proposed that appeals should be on a point of law only, by permission, on the generic ground that the decision of the tribunal was unlawful.[85]

4.68 We consider that a wider basis of appeal is necessary in the particular context of the project tribunals given the importance of valuation principles, as well as points of law, in these tribunals. One of the main purposes of the project tribunals is to determine questions of valuation. Professionally qualified valuer and surveyor members sit on the tribunals to determine specialist valuation issues. The power to decide points of valuation principle is an equally important facet of the Lands Tribunal's appellate role as its power to decide points of law. As noted by the then Attorney-General during the Second Reading of the Lands Tribunal Bill, the objective in creating the Lands Tribunal was that "there should be a single consistent jurisdiction combining legal and technical valuation expertise."[86] If appeals from our proposed PVT to our proposed reformed Lands Tribunal were to be restricted to appeals on a point of law, this would deprive the Lands Tribunal of

[82] SI 1996 No 1022.

[83] See Practice Direction 5.6.

[84] Consultation Paper No 170, para 4.26.

[85] Leggatt Report, para 6.12.

[86] *Hansard* (HC) 28 February 1949, vol 462, col 41.

a key role in ruling on valuation questions and developing valuation principles for future cases.

4.69 It has been argued[87] that if appeals were not restricted to points of law, this might open the floodgates in the number of council tax cases appealed to the Lands Tribunal. Council tax appeals from the Valuation Tribunals are currently to the High Court on a point of law only.[88]

4.70 Our proposed permission requirement should prevent an unnecessarily large number of council tax appeals being brought to the reformed Lands Tribunal. Although we cannot know exactly how many applications would be made for permission to appeal, the indications are that this would not be a very great number. The Lands Tribunal currently hears appeals from the Valuation Tribunal in non-domestic rating cases.[89] These appeals are not restricted to points of law and there is no permission filter. We understand that there are about 70 appeals a year from the Valuation Tribunal to the Lands Tribunal in these non-domestic rating cases.[90] We have also been told by the Lands Tribunal that in the days of domestic rating, when there was an appeal to the Lands Tribunal with no permission filter, the number of appeals was "extremely small in relation to the total number of houses and flats in England and Wales."

4.71 We do not therefore recommend a different basis for council tax appeals from the PVT to the Lands Tribunal. It is worth noting that the Lands Tribunal's view is that permission applications could be dealt with quickly in view of the essentially simple nature of council tax cases, if more demanding criteria were set for the grant of permission and a fee[91] were charged for making a permission application.

4.72 Under the Civil Procedure Rules, the hearing of appeals in the civil courts is limited to a review of the decision of the lower court, unless the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a rehearing. The court will not receive oral evidence or evidence which was not before the lower court, unless it orders otherwise.[92] In the Lands

[87] In a meeting of the land, valuation and housing tribunals advisory group. On the advisory group, see further para 1.4.

[88] The High Court has jurisdiction under the Valuation and Community Charge Regulations 1989 (SI 1989 No 439). Regulation 51 confers jurisdiction in respect of council tax decisions made under the Local Government Finance Act 1992, s 16 and Sched 3 para 3(1) and the Local Government Finance Act 1988 Sched 4A para 4. The High Court also has appellate jurisdiction under the Council Tax (Alteration of Lists and Appeals) Regulations 1993 (SI 1993 No 290), reg 32, in respect of appeals made pursuant to regs 8(3) and 13. The primary legislation is the Local Government Finance Act 1988, Sched 11 para 11.

[89] Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 (SI 1993 No 291), reg 47(1) and Non-Domestic Rating (Chargeable Amounts)(England) Regulations 1999 (SI 1999 No 3379), reg 37(4). These regulations were made under the Local Government Finance Act 1988, Sched 11 para 11(1)(b).

[90] Information from Lands Tribunal consultation response.

[91] We do not make any specific recommendations in this report about the issue of fees in tribunals. For a discussion of fees and costs, see paras 5.65 – 5.68.

[92] CPR 52.11(1) and 52.11(2).

Tribunal, there are no rules restricting how appeals should be heard, so the tribunal can hear cases by way of rehearing or review.

4.73 In practice the Lands Tribunal usually hears appeals as rehearings of the matters in dispute.[93] Some of the facts may in practice be agreed between the parties in advance of the hearing, so the Lands Tribunal does not need to hear fresh evidence on these matters.[94] The point at issue in many appeals is valuation, and the tribunal's decision on valuation rests on the evidence of valuation witnesses.[95] In many cases, therefore, the Lands Tribunal will need to be able to hear evidence afresh to determine an appeal. The case as a whole may be more quickly disposed of if the Lands Tribunal is able to hear evidence afresh where necessary rather than reviewing the case and remitting the case to the first tier tribunal. We therefore think that the Lands Tribunal's rules should state that the tribunal can deal with an appeal either by way of review or rehearing, with Practice Directions or internal procedures providing further guidance.

4.74 This basis of appeal would give the Lands Tribunal a broad power to hear appeals on the facts of cases. However, many cases will have been heard at first instance by members who are experts in the jurisdiction in question and in the local area. In most cases there will have been a site inspection by the first instance tribunal. We expect that the Lands Tribunal would interfere with first instance findings of fact relatively rarely where these facts are based on specialist knowledge or the results of a site inspection.[96]

Powers of the reformed Lands Tribunal on appeal

4.75 The powers of the Lands Tribunal on appeal at present differ slightly when hearing appeals from the Valuation Tribunal and those from the Leasehold Valuation Tribunal. In appeals from the Valuation Tribunal in non-domestic ratings cases, the Lands Tribunal may confirm, vary, set aside, revoke or remit the decision or order of the tribunal, and may make any order the tribunal could have made.[97] In appeals from the Leasehold Valuation Tribunal, the Lands Tribunal may exercise any power that was available to the Leasehold Valuation Tribunal.[98] It is not clear that this includes the power to remit the case to the Leasehold Valuation Tribunal.

[93] See *Ryde on Rating and the Council Tax* (1996) para F[354] in relation to non-domestic rating appeals from the Valuation Tribunal. In relation to appeals from the Leasehold Valuation Tribunal, see the Lands Tribunal's Practice Direction 5.8, which states that the Lands Tribunal will treat the appeal as a fresh hearing of the issues to which the application to the Leasehold Valuation Tribunal gives rise, except where permission has been granted on conditions that limit the appellant to particular grounds.

[94] Information provided by the Lands Tribunal.

[95] Information provided by the Lands Tribunal.

[96] See *Verkan and Co v Byland Close (Winchmore Hill) Ltd* [1998] 28 EG 118 (LT) in which it was said that the Lands Tribunal should be reluctant to interfere with the decision of a competent Leasehold Valuation Tribunal on facts for which they have the specialist local knowledge unless there is a dispute as to law or of valuation principle.

[97] Non-Domestic Rating (Alteration of Lists and Appeals) Regulations (SI 1993 No 291), reg 47(5).

[98] Commonhold and Leasehold Reform Act 2002, s 175(3).

4.76 We note that in the civil court system, the appeal court has all the powers of the lower court. Among the appeal court's powers is the power to affirm, set aside or vary any order or judgement made or given by the lower court or to refer any claim or issue for determination by the lower court.[99] We recommend that the reformed Lands Tribunal should have the same full range of powers on appeals.

JUDICIAL REVIEW

4.77 The Leggatt report recommended that first tier tribunals should be susceptible to judicial review only if all available rights of appeal had been exhausted, and that judicial review of a first tier tribunal in any other circumstance should be excluded by statute.[100] The report recommended that the proposed appellate Division (made up of second tier tribunals) should not be susceptible to judicial review in any circumstances, and that judicial review should be excluded altogether by statute.[101]

4.78 In practice, the project tribunals have very rarely been subject to judicial review,[102] perhaps because of the availability of alternative routes of appeal. The courts will hardly ever grant permission for judicial review[103] where a more appropriate alternative procedure is available.[104] The courts have upheld this principle on several occasions.[105]

4.79 In this report we propose a comprehensive, coherent and effective appeal system from the PVT to the reformed Lands Tribunal. We do not think that users should have the opportunity to forum shop by choosing between judicial review and an appeal to the Lands Tribunal.[106] Given the comprehensive appeal system we propose, we do not consider that users of the PVT would need an alternative remedy of judicial review.[107] One possibility would be to leave decisions about the availability of judicial review to the courts in the course of decisions about whether to grant permission for judicial review. However, our proposal for the exclusion of judicial review is a point of principle based on the existence of a coherent and exclusive route of appeal within the tribunal system. We therefore recommend that

[99] CPR 52.10(1) and 52.10(2).

[100] Leggatt report, recommendation 106.

[101] Leggatt report, recommendation 107.

[102] Although we do not have exact figures, we understand from the tribunals themselves that judicial review of the project tribunals is very rare in practice. Christopher Rodgers, *Agricultural Law* (2nd ed 1998), para 17.33 states that in the Agricultural Land Tribunal "the remedy by way of application for judicial review is rarely invoked in practice."

[103] Permission is required by CPR 54.4.

[104] De Smith, Woolf and Jowell, *Judicial Review of Administrative Action* (5th ed 1995) p663, para 15-015.

[105] *In re Preston* [1985] AC 835, 851 *per* Lord Scarman: "a remedy by way of judicial review is not to be made available where an alternative remedy exists. This is a proposition of great importance." See also *R v Secretary of State for the Home Department ex parte Swati* [1986] 1 All ER 717, 723 *per* Sir John Donaldson MR, and *R v Sandwell MBC ex parte Wilkinson* [1999] 31 HLR 22, *per* Laws J.

[106] See also the Leggatt report, para 6.35.

[107] See also the Leggatt report, para 6.30, which noted that judicial review has more complicated procedures and more limited remedies.

judicial review of decisions of the PVT should be expressly barred by statute where other remedies have not been exhausted.

4.80 We agree with the Leggatt report's recommendation on statutory exclusion of judicial review of the appellate Division. There would be an appeal from the reformed Lands Tribunal to the Court of Appeal. In order to prevent the possibility of forum shopping, it is desirable that judicial review of the Lands Tribunal be excluded. The Leggatt report reasoned that it would be inappropriate to allow judicial review proceedings from the appellate Division to the High Court on the basis that appellate Division would be of a similar status to the High Court as far as tribunals were concerned.[108] The report argued that as the Senior President of the appellate Division would be a High Court judge, as would be a number of other Presidents, it would be inappropriate to subject them to review by a judge of equal status.[109] Although we have not recommended that the President of the reformed Lands Tribunal should necessarily be a High Court judge,[110] the President would be a judge or a senior lawyer with a specialist and expert knowledge of the tribunal's jurisdictions. It was noted in the Leggatt report that the Lands Tribunal has a status "broadly equivalent to that of the High Court."[111] We recommend that statute should bar judicial review from the reformed Lands Tribunal.

REFERRALS TO THE COURTS

4.81 There are legislative provisions that enable referrals from some of the project tribunals to be made to the court for a number of different reasons.

The statutory provisions

4.82 There are two relevant statutory provisions which provide for referrals from two of the project tribunals to the courts.

Referrals from Agricultural Land Tribunals

4.83 Section 6 of the Agriculture (Miscellaneous Provisions) Act 1954 allows parties to request an Agricultural Land Tribunal to refer any question of law that arises in the course of proceedings to the High Court for decision. We understand that this provision is very rarely used in practice.

Referrals from the Adjudicator

4.84 Section 110 of the Land Registration Act 2002 allows the Adjudicator to direct parties to commence proceedings in the court to obtain the court's decision on a matter, instead of the Adjudicator deciding that matter himself.[112] Draft rules

[108] Leggatt report, para 6.32.

[109] Leggatt report, para 6.32.

[110] We have not recommended any change to the present qualification requirements for the President of the Lands Tribunal. See para 5.14 below.

[111] Leggatt report, Part II, Lands Tribunal section, para 1.

[112] This power relates to cases arising from objections to applications under Land Registration Act 2002, s 73(7).

provide for the adjournment of proceedings before the Adjudicator following such a direction and for the Adjudicator to close the proceedings (or that part of the proceedings which was referred to the court) without making a substantive decision once he has been informed of the court's decision.[113]

4.85 The Law Commission report on land registration[114] set out some of the reasons for which the Adjudicator's power might be used. These are

(1) "the application raises an important or difficult point of law;

(2) there are substantial or complex disputes of fact that are more appropriate for a court hearing;

(3) there are other issues between the parties already before the court (such as matrimonial proceedings); or

(4) the court has powers not available to the Adjudicator, as for example, the power to award damages for lodging a caution, applying for the entry of a notice or restriction, or objecting to an application without reasonable cause."[115]

Reasons for referral

4.86 We see two distinct reasons for referral to the courts, namely referrals on points of law and referrals relating to overlapping jurisdictions.

Referrals on points of law

4.87 The first reason is the referral of a point of law or the whole case to the court in order to utilise the court's expertise on points of law. This is typified by section 6 of the Agriculture (Miscellaneous Provisions) Act 1964.

4.88 Our new tribunal system aims to be a coherent and expert system in its own right. We do not therefore think that there should need to be referrals to the courts for the purpose of deciding complex aspects of law. Complex areas of law should be capable of being decided within the tribunals structure itself. If, within our new system, a difficult point of law arises in an agricultural (or other) case before the PVT, the case may well be deemed more suitable for the reformed Lands Tribunal, and could be transferred to that tribunal accordingly, with an appeal route to the Court of Appeal. The case would then be heard at the appropriate level of expertise. The transfer mechanism is explored at paragraphs 5.55 – 5.60.

4.89 The Adjudicator would, in our proposed scheme, be placed within the reformed Lands Tribunal. We do not think there should need to be what would essentially be "sideways" referrals to the High Court of complicated points of law or legally

[113] Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules: a consultation on draft rules, Lord Chancellor's Department (April 2003). See draft rules 8 and 9.

[114] Land Registration for the 21st Century: A Conveyancing Revolution (2001) Law Com No 271.

[115] Land Registration for the 21st Century: A Conveyancing Revolution (2001) Law Com No 271. See para 16.20.

complicated cases. In an expert system, there should be confidence that the Adjudicator would be able to deal with complicated legal issues, with appeals to the Court of Appeal. We therefore think that referrals from the Adjudicator to the court should be restricted to cases of jurisdictional overlap, as discussed in paragraph 4.90 below.

Referrals related to overlapping jurisdictions

4.90 The second reason for referral to the courts is the referral of part of or the whole case to the court because of issues related to overlapping jurisdictions. This is one possible use of the power in section 110 of the Land Registration Act 2002 for referrals to court. The provision is not restricted to referrals on points of law. We think it is useful to have a flexible power to refer matters to the court where the court is seised of other related issues between the parties, in order to avoid unnecessary duplication of proceedings. It could be useful for the PVT and the Lands Tribunal to have a power to direct parties to refer cases or parts of cases to the court in this way if appropriate for reasons of jurisdictional overlap. In Part VI, we recommend that our proposed PVT and reformed Lands Tribunal should have a similar power to that in section 110 of the Land Registration Act 2002 to refer cases or parts of cases to the courts in overlapping proceedings.[116]

4.91 The sole purpose of section 6 of the Agriculture (Miscellaneous Provisions) Act 1964 is to refer points of law to the courts. For the reasons set out in paragraph 4.88 above, we recommend the repeal of this section.

MINISTERIAL RESPONSIBILITY

4.92 We noted in Part III that the Leggatt report attached a great deal of importance to the fact that tribunals should be perceived by users to be independent. We noted that the perceived independence of tribunals is as important in those which hear disputes between private parties as in those which hear citizen and state disputes.[117] In the words of the Leggatt report, tribunals must be seen to "demonstrate similar qualities of independence and impartiality to the courts."[118]

4.93 The Leggatt report recommended that the Lord Chancellor should eventually assume responsibility for all tribunals. The report argued that the Lord Chancellor's responsibilities do not give rise to tribunal cases, and that the Lord Chancellor is already responsible for the appointment of most tribunal members and has extensive experience of managing the courts.[119] The Government's announcement of the unified Tribunals Service has indicated that transfer to the Lord Chancellor's Department (now the Department for Constitutional Affairs) is the way forward for tribunals. Of the project tribunals, the Lands Tribunal and the Adjudicator are the responsibility of the Department for Constitutional Affairs, the Agricultural Land Tribunals and the Commons Commissioners that of the

[116] See para 6.61 below.

[117] See para 3.23 above.

[118] Leggatt report, para 2.18.

[119] Leggatt report, para 2.25.

Department for Environment, Food and Rural Affairs and the RPTS tribunals and Valuation Tribunals that of the Office of the Deputy Prime Minister.[120]

4.94 We agree that it is important that tribunals are perceived by users to be independent. The Leggatt approach of attempting to achieve this perception of independence through transfer of responsibility to the Lord Chancellor's Department seems a commendable solution. In any event, if the project tribunals were unified as we propose, the two reformed tribunals would need to be the responsibility of a single Government department. We therefore recommend that ministerial responsibility for a PVT and a reformed Lands Tribunal should rest with the Lord Chancellor.

IMPLICATIONS OF THE NEW STRUCTURE FOR WALES

4.95 The Leggatt report recommended that the Tribunals System should include all tribunals whose jurisdiction covers England, England and Wales, Great Britain and the UK.[121]

4.96 The administration of the Leasehold Valuation Tribunal, the Rent Assessment Committee, the Rent Tribunal, the Agricultural Land Tribunal and the Valuation Tribunal as they operate in Wales has been devolved to the National Assembly for Wales. The administration of the Lands Tribunal, the Commons Commissioners and the Adjudicator has not been devolved. Our terms of reference relate to England only. Our recommendations for the reforms proposed above therefore do not extend to Wales.

4.97 Coincidentally, the devolved project tribunals are the same as those tribunals which we have recommended should be unified as a PVT. If our proposals were accepted by the Government, there would be a unified PVT in England. In Wales, the Leasehold Valuation Tribunal, the Rent Assessment Committee, the Rent Tribunal, the Agricultural Land Tribunal and the Valuation Tribunal would not be unified in this way. These tribunals would operate as discrete entities in Wales, administered by the National Assembly for Wales.

4.98 As they are not devolved, the Lands Tribunal, Commons Commissioners and Adjudicator function across England and Wales, administered centrally by the United Kingdom Government. If our proposals were accepted, in English cases the Lands Tribunal would operate as the reformed Lands Tribunal discussed in this report. In relation to Welsh cases, the Lands Tribunal, Commons Commissioners and Adjudicator would work as they currently do in Wales.

4.99 We consider it particularly undesirable that the Lands Tribunal may have to constitute itself as the old style Lands Tribunal to hear Welsh appeals, rather than constituting itself as the reformed Lands Tribunal. The new model for the Lands Tribunal is different in several respects to the Lands Tribunal as it operates now. For example, our scheme proposes the standardisation of the permission

[120] Note that a non-departmental public body, the Valuation Tribunal Service, is established by the Local Government Bill, clauses 104 – 105 and Sched 4 (as amended on report in the House of Lords on 17 July 2003).

[121] Leggatt report, para 11.4.

requirement and the ability to transfer cases to the PVT. In England, the reformed Lands Tribunal would function as the single route of appeal for all jurisdictions within the PVT whereas in Wales some appeals would still lie to the High Court.

4.100 We think that the benefits of our proposed system should extend to the project tribunals as they operate in Wales. We recommend that the National Assembly for Wales should consider adopting or joining in a unified tribunal structure.

PART V
OPERATION OF THE REFORMED TRIBUNALS

INTRODUCTION

5.1 In Part IV we set out our proposed new structure for the project tribunals. In this Part we consider important matters about the more practical operation of the tribunals in our proposed system. We consider these matters only in relatively broad terms. The precise way in which the tribunals would operate on a day to day basis can only be determined by those who would be in charge of practical operational matters. Much of the detail of what we propose would be contained in secondary legislation, Practice Directions or internal tribunal procedure documents.

REGIONAL STRUCTURE

5.2 The project tribunals have different regional structures. For example, the Lands Tribunal primarily sits in its own courts in London, although it also sits elsewhere in the country if this is more convenient for parties. There are 56 Valuation Tribunals, which are organised on a county and unitary authority basis in rural areas, and a district or borough basis in metropolitan areas. The RPTS tribunals have five Rent Assessment Panel areas in England. The Agricultural Land Tribunals have a regional structure based on the offices of the Department for Environment, Food and Rural Affairs.

5.3 Our proposed PVT would need to have a single regional structure. This would sensibly build on the estate and regional structure of the current project tribunals. The geographical locations would have to reflect the reality of the tribunal's jurisdictions and facilitate the use of the current expertise in each jurisdiction. The setting up of the final regional structure would inevitably have to take place over a period of time. We understand that there will be a regional structure for the unified Tribunals Service which will be mapped onto the Government Offices for the Regions. The PVT regional structure should reflect this.

5.4 The reformed Lands Tribunal would continue to be based at the Lands Tribunal's courts in London, but as the Lands Tribunal does now, it would be able to sit elsewhere in the country where appropriate. The Lands Tribunal would, in our proposed model, be able to take advantage of the regional structure of the PVT to assist with local hearings.

MEMBERS AND STAFF

5.5 The current project tribunals have different combinations of Presidents, Regional Chairs, chairs and members. For example, each regional Rent Assessment Panel within the RPTS system has a President, at least one Vice-President, chairs and members,[1] and there is a non-statutory Senior President. Each regional

[1] Rent Act 1977, Sched 10, paras 1 - 5.

Agricultural Land Tribunal has a Chair, Deputy Chairs and members,[2] but there is no central Presidential role. The Lands Tribunal simply has a President and tribunal members.[3]

5.6 One consequence of a unified system would be that the PVT and the reformed Lands Tribunal would each have to have a single, coherent membership structure. The Leggatt report's recommendation was that appellate and first tier tribunals should have a President, together with Regional (and possibly also District) Chairs in the largest first tier tribunals,[4] with tribunal chairs continuing to have a pivotal role.[5]

5.7 We consider that this Leggatt model is a sensible one for the project tribunals. For the reasons explored in paragraphs 5.9 – 5.14 below, we think that there should be a President at the head of the Lands Tribunal (as there is now) and a President at the head of the PVT. The PVT should also have a Regional Chair for each of its regional tribunals.[6]

5.8 If our proposals were accepted, the PVT and the reformed Lands Tribunal would be sponsored by the Department for Constitutional Affairs.[7] Recommendations for the appointment of tribunal Presidents, chairs and members may be a matter within the remit of a new Judicial Appointments Commission when it is established.[8]

Presidents and Regional Chairs

5.9 The Lands Tribunal has a President at its head, and the RPTS tribunals, although they sit regionally, have a central Senior President. The Valuation Tribunals have a central Management Board with three Presidents.[9] The Agricultural Land

[2] Agriculture Act 1947, Sched 9, paras 13 – 16.

[3] Lands Tribunal Act 1949, s 2.

[4] Leggatt report, paras 6.37 – 6.39.

[5] Leggatt report, para 7.18. It is stated that "chairmen carry the greatest immediate burden arising from a tribunal's distinctive functions" because they will be taking the lead in the "enabling approach".

[6] The regional structure is discussed at paras 5.2 – 5.4 above.

[7] See paras 4.92 – 4.94 above.

[8] The Government announced on 12 June 2003 that a new Independent Judicial Appointments Commission would be established to recommend candidates for appointment as judges. See press release "Modernising Government – Lord Falconer appointed Secretary of State for Constitutional Affairs" dated 12 June 2003, available on www.number-10.gov.uk. A consultation paper has recently been published on how the Commission could be established. This states that the Commission will be responsible for the full range of appointments currently made by the Lord Chancellor, including tribunal appointments. See Department of Constitutional Affairs, Constitutional Reform: a new way of appointing judges (July 2003), para 53.

[9] The Management Board of the Valuation Tribunal Service was set up following a Financial Management and Policy Review in 1999. Note that the Valuation Tribunal Service is established as a non-departmental public body by the Local Government Bill, clauses 104 – 105 and Sched 4 (as amended on report in the House of Lords on 17 July 2003). Schedule 4(2) provides that this body will have a chairman and a deputy chairman.

Tribunal, also a regional body, does not have a central President. The Commons Commissioners have a Chief Commons Commissioner and the Adjudicator will be a single post.

5.10 The Council on Tribunals has emphasised the importance of a Presidential system as a means of promoting a tribunal's independence. The Council has recommended that tribunals should have a judicial head who should be responsible for securing the conditions for independence which include among other things proper procedural rules, proper training and a high standard of judicial performance.[10]

5.11 The central role and importance of the President was also noted in the Leggatt report. The report stated that the President's role is to promote consistency of decision-making and uniformity of practice and procedure.[11] It cited other key Presidential functions as personally hearing cases that raise novel and complex issues, and having overall responsibility for training, case allocation and recruitment.[12]

5.12 We consider that it is advantageous for tribunals to have a Presidential head, for the reasons cited above. We therefore propose that the reformed Lands Tribunal and the PVT should each be headed by a President.

5.13 We have noted that the reformed Lands Tribunal should continue to operate mainly out of the Lands Tribunal's courts in London. The PVT, on the other hand, would have a regional structure. Each regional office would need to have a judicial head to take control of the judicial management of that office, under the overall control of the President of the PVT. We therefore recommend that the PVT should have Regional Chairs.

5.14 The present qualification requirements for the President of the Lands Tribunal are that the President must have held judicial office, have a seven year general qualification or be a member of the Bar of Northern Ireland of at least seven years' standing.[13] We do not propose any change to these requirements. We propose that the President and Regional Chairs of the PVT should have the same qualifications as the President of the Lands Tribunal.

Members

The main body of members

5.15 Specialist tribunals must have members who are specialists in the tribunals' areas of jurisdiction. The membership of the two reformed tribunals in our proposed system would therefore, at least initially, be made up of the existing members of the current project tribunals. Current members of the project tribunals would become either a member of the PVT or a member of the reformed Lands

[10] Tribunals: their Organisation and Independence, Council on Tribunals (1997) Cm 3744.

[11] Leggatt report, paras 6.38 and 7.13.

[12] Leggatt report, paras 7.14 – 7.16.

[13] Lands Tribunal Act 1949, s 2(2).

Tribunal. Each member would have one or more "specialisms", which would reflect their current area or areas of expertise. Members would be allocated to sit in cases within their area of specialism. Member specialisms are discussed in further detail at paragraphs 5.20 – 5.25 below.

5.16 At present there is a mixture of full-time and part-time members in the project tribunals. Members of the first tier project tribunals are part-time, as are the Commons Commissioners. The Lands Tribunal is predominantly made up of full-time members, and the Adjudicator will be a full-time post.

5.17 We recognise that it is important to retain the flexibility to have both full-time and part-time members. Each brings advantages to the system. Part-time members bring their continuing experience of work outside the tribunals. Full-time members are able to become more involved in the running of the tribunal, and may have a role in aspects of tribunal management and training.[14] In our system, members of the PVT and the Lands Tribunal would be either full-time or part-time members as appropriate. The PVT and the reformed Lands Tribunal might employ a combination of full-time and part-time members as appropriate, and our system would be sufficiently flexible to accommodate this. We note that there is no provision in the Land Registration Act 2002 for the appointment of deputies to the Adjudicator, and the Act may need to be amended to provide for such appointments.

Membership panels

5.18 The current project tribunals operate with a number of different categories of members. Members are either legal, professional or lay members, although this is not always a clear cut classification. Surveyors and valuers are clear examples of professional members who have a recognised qualification in their areas of expertise. There are, however, other ways of acquiring expertise. In the Agricultural Land Tribunal, there is a panel of members which represents the interests of farmers and a panel of members which represents the interests of owners of agricultural land.[15] Although these members may not have formal professional qualifications, they are specifically chosen for their expertise in agriculture. We therefore regard them as expert members. They can be contrasted with the lay members of Valuation Tribunals and the RPTS tribunals, for whom there are no particular qualification or expertise requirements.

5.19 We recognise that these different categories of member would have to be properly integrated in a unified system. We consider this should be done by establishing panels of different types of members in both the PVT and the Lands Tribunal. In the PVT, there would be three such panels: legal members, professional members and lay members. In the Lands Tribunal, there would be two panels: legal members and professional members. The professional members in each tribunal would include surveyors, valuers and the wing members of the Agricultural Land Tribunals. The lay members in the PVT would initially be the current lay members

[14] We have been told that in The Appeals Service, full-time members have a role in tribunal management, for example in the appraisal of part-time members.

[15] Agriculture Act 1947, Sched 9 para 15. Nominations for the panels are made by bodies such as the National Farmers Union and the Country Landowners Association.

of the Valuation Tribunals and the RPTS tribunals.[16] Where appropriate, tribunal members could belong to more than one panel.

Member specialisms

5.20 Each of the panels of legal, professional and lay members would be subdivided to reflect the fact that every member of the tribunal would have their own "specialism", that is, a particular area of expertise. The specialisms reflect the importance of retaining and taking advantage of the expertise of tribunal members in a reformed unified structure.

5.21 In our consultation paper, we discussed the possibility of "ticketing" members for different types of case. We explored the possibility of members being ticketed to hear several different types of case, with a possible move over time towards members being able to hear all types of case within a unified tribunal. We have been persuaded by the consultation process that the idea of tribunal members being able to hear all types of cases would be too radical.

5.22 We have instead moved towards a recognition that every member of the current project tribunals should be recognised to have a specialism in their area of expertise. Specialisms come not only from the professional background of some members, but also from training and the experience and expertise built up by sitting members of the tribunals over time. For example, members of the Valuation Tribunal, although lay members, acquire expertise through hearing a number of cases over a period of time. Initially the specialisms would equate to the current jurisdictions of each of the project tribunals. For example, a member of our proposed PVT might have a specialism in agricultural land disputes, or in local government finance disputes. This might, of course, change over time.

5.23 The concept of member specialisms would primarily apply to the PVT rather than to the Lands Tribunal. In our proposed system, the reformed Lands Tribunal would be based largely on the existing Lands Tribunal. We have suggested that the Adjudicator and the Chief Commons Commissioner be retained as discrete posts within the reformed Lands Tribunal. There would therefore be no need to allocate specialisms to the members of the Lands Tribunal. Cases which are now within the jurisdiction of the Commons Commissioners would be heard by the person designated as the Chief Commons Commissioner, sitting within the reformed Lands Tribunal. Cases now within the jurisdiction of the Adjudicator would be heard by the person designated as the Adjudicator to HM Land Registry, sitting within the reformed Lands Tribunal. The remainder of cases, that is those which are now within the jurisdiction of the Lands Tribunal, would be heard by the current members of the Lands Tribunal. The President could still in practice allocate these Lands Tribunal cases to the Chief Commons Commissioner or the Adjudicator if he thought it appropriate, but we do not think the concept of specialisms would be needed to do this.

[16] This panel system is somewhat analogous to the Appeals Service, in which there are four types of members, who have either a legal, medical, financial or disability qualification. See the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (SI 1999 No 991), reg 35 and Sched 3. The primary legislation is the Social Security Act 1998, s 6(3). See further paras 7.34 – 7.35 below.

5.24 Each member of the PVT would have their own specialism, based on their existing expertise. Members would in time be able to acquire additional specialisms through training and sitting on different types of cases if they chose to do so. For example, a legal member who previously sat in the Agricultural Land Tribunal might chose to gain experience of and develop an additional specialism in residential property disputes, in order to sit on cases previously heard in the RPTS tribunals. This system of specialisms would enable a more flexible and efficient use of adjudicative personnel than the current structure allows, and would have the additional benefit of providing a range of work and career development for members. An advantage of a unified tribunal system with more diverse areas of work available and possible career progression is that this could assist in the recruitment of additional high calibre members in the future.

5.25 We explore in paragraphs 5.47 – 5.54 below the way in which the membership panels and member specialisms would be used in case allocation.

Additional members

5.26 We think there should be a sufficient level of flexibility to ensure that cases are always heard by the right members. This should, we believe, include the possibility of bringing in additional expertise from outside of the regular membership of the PVT or the Lands Tribunal where necessary.

5.27 We consider that it would benefit the tribunals, especially our proposed reformed Lands Tribunal, if High Court or circuit judges were able to sit in tribunal hearings on occasion. Judges could be appointed to a special panel of tribunal members and sit on appropriate cases in the tribunals.

5.28 There could also be opportunities for members of the PVT to sit in the Lands Tribunal in appropriate cases. PVT members could be appointed to the panel of Lands Tribunal members. As well as providing additional expertise to the Lands Tribunal, this could provide interesting and valuable experience for the members of the PVT.

Future members

5.29 We have noted that the initial members of the proposed PVT and reformed Lands Tribunal would be the current members of the project tribunals. Some thought would also have to be given to the appointment of future members of the reformed tribunals. The current members of the project tribunals have a diverse range of qualifications.[17] We think that, for the future, there should be a flexible power for the appointment of members with suitable qualifications to the PVT and the reformed Lands Tribunal. In Part VII, we suggest that primary legislation could

[17] For example, in the RPTS tribunals, members are appointed without any statutory qualifications requirements. In the Lands Tribunal, Agricultural Land Tribunal and the Commons Commissioners, legal members must have a seven year general qualification as defined in the Courts and Legal Services Act. The Adjudicator must have a ten year general qualification.

provide for the three membership panels,[18] with the power for members with appropriate qualifications to be appointed to each of these panels.[19]

The registrar and deputy registrars

5.30 The Lands Tribunal has a registrar who has a number of functions. Many of these functions are conferred on the registrar by the Lands Tribunal Rules 1996.[20] These include preliminary consideration of cases for jurisdictional purposes, service directions in restrictive covenant cases,[21] allocation to the appropriate case procedure,[22] general case management, the consideration of interlocutory applications,[23] detailed assessment of costs,[24] directions and certificates for rights of light applications[25] and assisting in representing the tribunal in external relations with other bodies.

5.31 The Leggatt report recommended the appointment of registrars with a partly legal and partly managerial role. The report based its conclusions about the role of registrars on the registrar of the Lands Tribunal. The report essentially put forward the view that registrars should undertake preparatory pre-hearing work and make interlocutory decisions for the tribunal, under direction, as well as offering legal or procedural advice to tribunal members or administrators as required. The report suggested that registrars should be legally qualified, and that it might be useful for the powers and duties of registrars to be set out in legislation.[26]

5.32 We consider that a registrar role would be beneficial in our proposed system, especially given the importance of case allocation and case transfer within the system (see paragraphs 5.47 – 5.60 below). Our view is that both the PVT and the reformed Lands Tribunal should have a registrar. The Lands Tribunal, as we have said, already has a registrar, but this would be a new post in the PVT. The registrar

[18] The membership panels are discussed at paras 5.18 – 5.19 above.

[19] See para 7.42 below.

[20] SI 1996 No 1022.

[21] The Lands Tribunal has jurisdiction in relation to the discharge or modification of restrictive covenants under the Law of Property Act 1925, s 84. The Lands Tribunal Rules 1996 (SI 1996 No 1022), r 14 requires the registrar to determine what notices need to be given to persons who appear to be entitled to the benefit of the restriction.

[22] Cases in the Lands Tribunal can be allocated to either the special procedure, the standard procedure, the simplified procedure or the written representations procedure. See further the Lands Tribunal Rules 1996 (SI 1996 No 1022), rules 27 and 28 and Lands Tribunal Practice Direction 3.1, available at www.courtservice.gov.uk/tribunals/lands.

[23] Lands Tribunal Rules 1996 (SI 1996 No 1022), r 38(1).

[24] Lands Tribunal Rules 1996 (SI 1996 No 1022), r 52(2). The parties can appeal to the President under r 52(3).

[25] Under the Rights of Light Act 1959, s 2 a landowner can apply to the local authority for registration of a notice that he intends to erect a structure that would be equivalent to the obstruction to the right of light for an adjacent landowner. A certificate of the Lands Tribunal must accompany the application to the local authority. Under the Lands Tribunal Rules 1996 (SI 1996 No 1022), r 22 the registrar shall determine what notices are to be given to persons who appear to have an interest in the dominant land.

[26] See the Leggatt report, para 8.8.

should have an important administrative role with some case management powers, in consultation with and under the direction of the President. Although the main powers and duties of the registrar could be contained in primary legislation, the precise division of functions between the President, the registrar and administrative staff would be a matter for secondary legislation and internal tribunal procedures. We think it important that the registrar should be legally qualified and that this should be stipulated in legislation.

5.33 The clerks in the Valuation Tribunals[27] have a dual legal and administrative role. Their role is to attend tribunal hearings and to advise tribunal members about procedural and legal issues. In having both a powerful administrative and an important advisory legal role, the Valuation Tribunal clerks are similar to the office of the registrar which we describe above. We suggest that the clerks in the Valuation Tribunals should become deputy registrars in our proposed system. This would have the additional advantage that the regional offices of the PVT would each have one or more experienced deputy registrars, who could carry out many of the PVT registrar's functions in the regional offices under the management of the head registrar.

Administrative staff

5.34 The Leggatt report recommended that the administration of tribunals should be brought together in a single administrative service. The report considered that users would benefit from a single point of contact to tribunals and that the provision of central support services would mean greater administrative efficiency because of the possibilities of, for example, rationalising tribunal accommodation. The report cited the example of the Appeals Service, which has stated that its amalgamation of five social security jurisdictions has allowed it to move staff (and members) between jurisdictions when this is necessary. The Leggatt report also argued that a single tribunals service could be expected to yield better career opportunities for staff, who could move between different tribunal areas.[28] This vision of a unified Tribunals Service has now been accepted by Government in its announcement that the ten largest non-devolved central government tribunals will be brought into a single service.[29]

5.35 We agree that there are many potential advantages to unified tribunal administration. Certainly in a administratively unified system, there would be nothing to prevent the tribunals becoming more efficient by sharing experience and resources such as IT systems and staff training. Responses to our consultation paper showed that others also see advantages in a unified administration. For example, one consultation response referred to the business centres, a form of

[27] Clerks are appointed under the Valuation and Community Charge Tribunal Regulations 1989 (SI 1989 No 439), reg 11. The enabling legislation is the Local Government Finance Act 1988, Sched 11 para 6(1)(a).

[28] Leggatt report, paras 5.8 and 5.9, and more generally Chapter 5 as a whole.

[29] This is discussed more fully in para 1.5 of this report.

unified administration, that are being set up to support the work of the Immigration Appellate Authority.[30]

5.36 A unified administration should draw on the strengths of the existing staff in the project tribunals who have had the opportunity to develop expertise in the tribunals' jurisdictions. The precise role of the current clerks and administrative staff in the project tribunals would need to be considered as part of the practical arrangements for the tribunals, to ensure there is no dilution of existing expertise.

TRIBUNAL RULES

5.37 The detailed procedural rules of the PVT and the reformed Lands Tribunal would largely be a matter for secondary legislation and the tribunals' internal procedures. In this section we consider some more general matters relating to the issue of a central procedural code and then some key rules which are central to our model. A large number of these are broadly speaking issues related to case management.

5.38 Whatever arrangements were put onto place for determination of the tribunals' rules, the Council on Tribunals should be consulted before the making of procedural rules. All of the project tribunals which would be unified in our proposed PVT and reformed Lands Tribunal are within the Council's remit.[31]

A common procedural code

Feasibility of a common code

5.39 The current project tribunals each have different rules of procedure. In a unified tribunal system, we believe there would be benefits for users and for the tribunals themselves if there were a common set of up to date procedures. There are undoubtedly some areas where different jurisdictions would need some different procedural rules. However, it should be possible to have a common set of procedures in each tribunal with variants for different jurisdictions where necessary. The Council on Tribunals Model Rules of Procedure for Tribunals are a valuable resource for a common procedural code.[32] These Model Rules are intended to be tailored to the circumstances of individual tribunals,[33] for example,

[30] See also Henry Brooke, "The future is arriving" (2002) 15 Journal of the Judicial Studies Board 11.

[31] Tribunals and Inquiries Act 1992, s 8. The provision relates to tribunals listed in Sched 1 to the Act. All of the project tribunals within our terms of reference are so listed.

[32] Council on Tribunals Model Rules of Procedure for Tribunals (1991) Cm 1434, as amended in February 2000, para 1. The Council on Tribunals latest model rules were published as a consultative draft in January 2003. The Council has told us that this will be called "Guide to Drafting Tribunal Rules" rather than "Model Rules of Procedure."

[33] The covering letter to the consultation on draft rules states that "the purpose was to provide a collection of precedents from which Tribunals and government departments could choose, when drafting or revising a Tribunal's procedural rules or regulations." The covering letter is available on www.council-on-tribunals.gov.uk. The fact that the Council on Tribunals aims to provide a guide to rule drafting rather than a complete set of tribunal rules is emphasised by the proposed new title for the Council's next publication on the subject. See para 5.39, footnote 32 above.

rules relating to entry onto land for inspections[34] would be particularly relevant to the PVT and the reformed Lands Tribunal while others might be less relevant.

5.40 The Appeals Service rules of procedure can be taken as an example of a common set of procedures which makes provision for different rules where this is necessary for a different jurisdiction. The procedural rules for all appeals to the Appeals Service are contained in Part V of the Social Security and Child Support (Decisions and Appeals) Regulations 1999.[35] The regulations contain some rules that only relate to one of the tribunal's jurisdictions, that is child support cases. Regulation 44 provides for confidentiality in child support cases, and regulation 45 relates to consideration of more than one appeal under section 20 of the Child Support Act. These rules relate to specific aspects of the child support jurisdiction.

5.41 In the context of the project tribunals, some different procedural rules might be needed for those disputes which are between private parties and those which are between the citizen and the state. The Council on Tribunals Model Rules[36] suggests alternative rules for disputes between private parties and those between the citizen and the state relating to the commencement of appeals or applications[37] and action by the respondent on receipt of the appeal or application.[38] These could be adapted for the PVT and the reformed Lands Tribunal as appropriate.

Rules Committee

5.42 Rule-making for the civil and criminal courts is assisted by Rules Committees. The Rules Committees in the court system are the following.

(1) The Civil Procedure Rules Committee,[39] which makes rules for the Civil Division of the Court of Appeal, the High Court and the county courts.[40] The Committee members are the Master of the Rolls, the Vice Chancellor, and twelve other persons including other judges, lawyers and persons with other particular experience.[41] The rules for the civil courts are made by this Committee, subject to the approval of the Lord Chancellor.[42]

(2) The Family Proceedings Rules Committee,[43] which makes rules for family proceedings in the High Court and the county court.[44] Committee

[34] Draft rule 31.

[35] SI 1999 No 991.

[36] See para 5.39 footnote 32 above.

[37] Draft rules 5A and 5B.

[38] Draft rules 14A and 14B.

[39] This Committee was established by the Civil Procedure Act 1997, s 2.

[40] Civil Procedure Act 1997, s 1.

[41] Civil Procedure Act 1997, s 2.

[42] Civil Procedure Act 1997, s 2(8).

[43] This Committee was established by the Matrimonial and Family Proceedings Act 1984, s 40.

[44] Matrimonial and Family Proceedings Act 1984, s 40(1).

members include the President of the Family Division, other judges and lawyers. The Committee may only make rules with the participation of the Lord Chancellor.[45]

(3) The Magistrates' Courts Rules Committee, which advises on rules to be followed in magistrates' courts and by justices' clerks.[46] The members of the Committee include the Lord Chief Justice, the President of the Family Division, the Chief Magistrate, lawyers and justices' clerks.[47] The Lord Chancellor makes the rules of court after taking the advice of the Rules Committee.[48] The Committee therefore has more of an advisory only role than the Civil Procedure Rules Committee or the Family Proceedings Rules Committee.

(4) The Crown Court Rules Committee, which makes rules for the Crown Court and the criminal division of the Court of Appeal.[49] The members of the Committee are the Lord Chief Justice, other judges, the registrar of criminal appeals and lawyers.[50] The Committee makes rules with the participation of the Lord Chancellor.[51] It is therefore similar to the Family Proceedings Rules Committee in the exact way in which the rules are made.[52]

5.43 There are also other Rules Committees which make rules other than rules of court. Some of these Rules Committees have non-lawyer expert members. The Insolvency Rules Committee has a practising accountant[53] and the Land Registry Rule Committee has members nominated by the Royal Institution of Chartered Surveyors and the Council of Mortgage Lenders.[54]

5.44 Our view is that, as there is in the civil and criminal justice systems, there should be a Rules Committee to assist with the making of procedural rules for our proposed PVT and reformed Lands Tribunal. Such a Rules Committee could bring together and utilise the expertise of senior members of the PVT and the Lands Tribunal, lawyers and other experts in land, valuation and housing matters.

[45] Matrimonial and Family Proceedings Act 1984, s 40(1).

[46] This Committee was established by the Magistrates' Court Act 1984, s 144(1).

[47] Magistrates' Court Act 1984, ss 144(2) and 144(3).

[48] Magistrates' Court Act 1984, s 144(1).

[49] This Committee was established by the Supreme Court Act 1981, s 86.

[50] Supreme Court Act 1981, s 86(1).

[51] Supreme Court Act 1981, s 86(1).

[52] Note that under the Courts Bill, cl 69 there will be a new Criminal Procedure Rule Committee to make rules of court for the criminal courts. By cl 68, criminal courts are (a) the criminal division of the Court of Appeal; (b) when dealing with any criminal cause or matter (i) the Crown Court and (ii) a magistrates' court. The Courts Bill was introduced in the House of Commons on 20 May 2003.

[53] Insolvency Act 1986, s 413(3).

[54] Land Registration Act 2002, s 127(2).

5.45 The Rules Committee for the proposed PVT and reformed Lands Tribunal would sensibly be the Rules Committee which we understand is likely to be set up for the unified Tribunals Service. It is not clear whether a unified Tribunals Service Rules Committee would have an advisory role (like the Magistrates' Courts Rules Committee) or a stronger rule-making role (like the other three court Rules Committees discussed above). Our view is that a Rules Committee for the proposed PVT and reformed Lands Tribunal, as a body made up of experts in the field, should have the stronger rule-making role.

5.46 As noted above,[55] a Rules Committee has been set up under the Land Registration Act 2002. This Rules Committee does not directly impact on procedures relating to the Adjudicator. The role of the Rules Committee is only exercisable in relation to "land registration rules".[56] Rules under Part 11 of the Land Registration Act 2002 relating to the adjudicator are not land registration rules.[57] The Rules Committee therefore technically has no function in relation to those rules, although it has been said that "in relation to other rules, the Lord Chancellor will no doubt seek the views of the Rules Committee even though he is not required to do so."[58]

Case allocation

5.47 The proper allocation of cases to the members who have the expertise to hear them is a central feature of our proposed system. The allocation of cases to members from the appropriate panels and with the appropriate specialisms would be the function of the President of the Lands Tribunal, and of the President and the Regional Chairs in the PVT. In practice, the registrar of each tribunal (or the deputy registrars) might carry out much of the routine case allocation in consultation with and under the direction of the President and Regional Chairs where appropriate.

5.48 As noted above,[59] members in the PVT and the reformed Lands Tribunal would be in panels of legal, expert or lay members. The members of the PVT would each have a specialism (we have noted in paragraph 5.23 above that member specialisms would not be required in the Lands Tribunal). The question arises as to how these panels and specialisms should be used to allocate members to cases. In particular, there are questions about how many members are to hear each case and from which of the panels members should be chosen for any one case.

5.49 At present, with the exception of the Valuation Tribunals, the composition of individual tribunals to hear cases is prescribed in primary legislation, as follows.

[55] See para 5.43 above.

[56] Land Registration Act 2002, s 127(1).

[57] Land Registration Act 2002, s 132.

[58] Charles Harpum and Janet Bignall, *Registered Land The New Law* (2002), p 223 footnote 11.

[59] See paras 5.18 – 5.19.

(1) In the Lands Tribunal, hearings may be before one or more of its members.[60]

(2) A single person sits in Commons Commissioners hearings.[61]

(3) The Adjudicator is a single person tribunal.

(4) In the RPTS tribunals, hearings must be before a chair and one or two other members,[62] although the President may direct with the consent of the parties that the chair alone can exercise the tribunal's functions[63] and when exercising functions of the Rent Tribunal under section 81A of the Rent Act 1977[64] the chair sits alone.[65]

(5) In the Valuation Tribunals, hearings are before three members, to include one chair, unless all parties agree that the appeal may be decided by two members.[66]

(6) In the Agricultural Land Tribunals, there must be three members at each hearing, to comprise one lawyer, one agricultural expert representing the interests of tenants and one agricultural expert representing the interests of owners.[67]

5.50 In our proposed system, how cases were allocated and the level of flexibility in case allocation would depend on how the mechanics of case allocation were set out in legislation. We see three ways that this could be done.

(1) Primary legislation could be used to prescribe how the tribunals should be constituted in different types of cases. This legislation would be similar to that which is now used in relation to the majority of the project tribunals, as described above.

(2) Primary legislation could set out broad powers relating to case allocation, leaving the details to be provided for in secondary legislation. A model for this is case allocation in The Appeals Service. The Social Security Act 1998[68] provides that an appeal tribunal is to consist of one, two or three members drawn by the President from a panel of members.[69] The details

[60] Lands Tribunal Act 1949, s 3.

[61] Commons Registration Act 1965, s 17(2).

[62] Rent Act 1977, Sched 10, para 5.

[63] Rent Act 1977, Sched 10, para 6.

[64] Section 81A relates to the cancellation of the registration of rent.

[65] Rent Act 1977, Sched 10, para 6A.

[66] Valuation and Community Charge Regulations 1989 (SI 1989 No 439), reg 25.

[67] Agriculture Act 1947, Sched 9, para 16.

[68] Section 7.

[69] This panel of members is constituted under the Social Security Act 1998, s 6 which provides for a panel of persons to be constituted by the Lord Chancellor to act as members of appeal tribunals.

are filled in by secondary legislation,[70] which states the cases in which the tribunal must consist of a legal member;[71] both a medically qualified and a legally qualified member;[72] both a financially qualified and a legally qualified panel member[73] and so on. This system has the benefit of future flexibility of tribunal composition.[74]

(3) Primary or secondary legislation could simply contain broad powers, leaving the precise details of case allocation to be dealt with by each tribunal's internal procedures. This would give the PVT and the Lands Tribunal a very broad power to decide which types of members should hear different cases.

5.51 We think that the model of the Appeals Service legislation is a good one. We consider that primary legislation should contain broad powers in a similar way to the Social Security Act 1998, with the details to be filled in by secondary legislation. This combines a degree of legislative structure with flexibility for future changes to that structure. Our proposed Rules Committee, made up of experts in the fields of land, valuation and housing would then be able to feed into the decision about how different individual tribunal sittings should be constituted using the panels of members available in the PVT and the Lands Tribunal. We expect that the various types of cases would at least initially be allocated to the same categories and number of members that hear those cases now, but that this might need to change over time.

5.52 In our proposed system, the new concept of "member specialisms" would also have to be used in the case allocation mechanisms. Member specialisms would relate to the particular types of case with which the member had had practical experience, or training, or both.[75] We think that the details of allocation by reference to member specialisms should also be contained in secondary legislation. Cases would be allocated to members both by reference to the three panels and to member specialisms. A legislative structure for our proposed model is discussed further in Part VII of this report.

5.53 Our proposed case allocation system can be further explained with an example. In this scenario, the PVT receives an appeal relating to local government finance.[76] Primary legislation has established panels of tribunal members, including a lay panel, and a set of specialisms, including a local government finance specialism.

[70] The Social Security and Child Support (Decisions and Appeals) Regulations 1999 (SI 1999 No 991), reg 36.

[71] The Social Security and Child Support (Decisions and Appeals) Regulations 1999 (SI 1999 No 991), reg 36(1).

[72] The Social Security and Child Support (Decisions and Appeals) Regulations 1999 (SI 1999 No 991), reg 36(2).

[73] The Social Security and Child Support (Decisions and Appeals) Regulations 1999 (SI 1999 No 991), reg 36(3).

[74] This is discussed in more detail in para 7.39 below.

[75] See paras 5.20 – 5.25 for a discussion of member specialisms.

[76] For example, a dispute under the Council Tax (Alteration of Lists and Appeals) Regulations 1993 (SI 1993 No 290), reg 13 that a proposal to alter the valuation list is not well-founded.

Primary legislation states that the President is to select members from the panels with the appropriate specialism to hear individual cases, in accordance with the rules set out in secondary legislation. Secondary legislation would state in this case that three members should hear the case and that these should be chosen from the panel of lay members of the tribunal. Secondary legislation would also require these three lay members to have a local government finance adjudication specialism.

5.54 The advantage of this case allocation system is that it would be flexible. The tribunal would have a wide pool of members from which to select the appropriate people to hear an individual case. This case allocation system would accommodate the different categories and expertise of members in the project tribunals. The case allocation system would also be sufficiently flexible to accommodate any future changes to tribunal composition which could be made by the Government in future legislation. For example, in paragraph 4.36, we recommend that the Government consider reviewing the adjudication of local government finance disputes. If such a review were to suggest changes to the current lay membership of the Valuation Tribunals, our proposed case allocation system would be able to adjust to any resulting changes.

Case transfer

5.55 We discussed in paragraphs 4.14 – 4.15 above the proposed delineation of jurisdiction between the PVT and the reformed Lands Tribunal. Notwithstanding these areas of jurisdiction, there may be some individual cases which would more suitably be heard at either a higher or a lower level. Some cases that commenced in the PVT might benefit from the expertise of the Lands Tribunal; similarly some smaller cases started in the Lands Tribunal might be more suitable for hearing in the PVT.

5.56 We have noted that although the majority of the Lands Tribunal's first instance jurisdictions are complex cases which require the special expertise of the Lands Tribunal, the tribunal does hear some less complex first instance cases.[77] Cases which might often be suitable for transfer to the PVT might be those which are currently heard under the Lands Tribunal's simplified procedure. This procedure is said by the Lands Tribunal to be "suited to straightforward and simple cases, normally where the amount at stake is small and where the decision will not have implications for other cases."[78] An example of a suitable case for transfer might be the case of *Nesbitt v National Assembly for Wales,*[79] in which compensation relating to a single house was in dispute and the compensation awarded by the tribunal was £6,250.[80] The Lands Tribunal has noted that although the tribunal can at present hear these cases under its simplified procedure, users might have a greater

[77] See para 4.43 above.

[78] Quoted from the Lands Tribunal website at www.courtservice.gov.uk/tribunals/lands.

[79] LT ref LCA/139/2001.

[80] See also para 4.43.

perception of tribunal accessibility if their compensation cases could, where appropriate, be heard by a regional first tier tribunal.[81]

5.57 On the other side of the coin, it might be appropriate for large-scale or particularly complex service charge cases, for example, to be transferred to be heard at first instance in the Lands Tribunal. This would avoid unnecessary time and expenditure on a first instance PVT hearing with an appeal to the Lands Tribunal, if the case would clearly more appropriately be heard at first instance in the Lands Tribunal.

5.58 If some of the Lands Tribunal's first instance cases were to be transferred to the PVT, there would have to be some members of the PVT with a specialism in these jurisdictions. Members of the PVT would only properly be able to develop such a specialism by observing and sitting on a number of hearings in these jurisdictions. To some extent this could be done by their sitting in the Lands Tribunal where appropriate, as mentioned in paragraph 5.28 above. A sufficient number of the Lands Tribunal's first instance cases would also need to be transferred to the PVT for some members to properly be able to develop a specialism in this area.

5.59 We propose that there should be rules which allow for cases to be transferred from one tribunal to the other where this is appropriate, on a case by case basis. The precise details are a matter for secondary legislation and internal tribunal procedures, but we see the procedure being something along the following lines. Tribunal users would make their application to the tribunal which had initial jurisdiction to hear the case. The tribunal with initial jurisdiction would decide whether the case should be transferred as part of its case management powers. The tribunal would have power to make this decision either on the application of the parties or of its own motion.[82] We expect that case law would develop over time which would assist the PVT and the Lands Tribunal in deciding when it was appropriate to make use of these case transfer powers.

5.60 It might become apparent over a period of time that some jurisdictions initially exercised by one level of tribunal were routinely being transferred under case transfer rules to the other tribunal. It might then be sensible for the initial jurisdiction to be rationalised accordingly.

Alternative Dispute Resolution

5.61 The Leggatt report stated that there was scope for ADR in land and property disputes, and asserted that "mediation has a proven record of efficacy in cases involving a number of parties with conflicting interests, and that is a common feature of leasehold disputes before the Leasehold Valuation Tribunal."[83]

[81] The Lands Tribunal told us in their consultation response that although the Lands Tribunal sits locally where necessary and can hear cases under the simplified procedure, "it may nevertheless sometimes be perceived, as a London-based tribunal known for dealing with major cases, as somewhat remote and formidable."

[82] These rules might be similar to CPR 3.3, which sets out the court's power to make an order of its own initiative as well as on an application.

[83] Leggatt report, para 8.22.

5.62 Consultees agreed that alternative dispute resolution can sometimes be a useful dispute resolution mechanism in land, valuation and housing disputes. Consultees told us that ADR can be useful in disputes between citizens and the state as well as in disputes between private parties. It was, however, noted that there is less need for ADR in a simple and more informal tribunal system.

5.63 We think ADR should be encouraged in our proposed PVT and reformed Lands Tribunal where this is appropriate. Our view is that the tribunals' procedural rules should include a statement that alternative dispute resolution is to be encouraged in cases before the tribunals where appropriate. The application of ADR to individual cases would depend on the circumstances of each case. Further detailed rules about ADR might be needed to take account of the needs of particular jurisdictions.

5.64 The rationalisation of the current tribunals might provide an opportunity for the rational development of alternative dispute resolution services in land, valuation and housing disputes. Consideration might also be given to expanding the role of the Independent Housing Ombudsman further into this area.[84] ADR is clearly only possible as a dispute resolution mechanism if the necessary services are available to support its provision in practice.

Fees and costs

5.65 Some of the project tribunals charge fees to users, though the majority are free at the point of access.[85] Some of the tribunals, notably the Lands Tribunal, have a power to award costs, while the majority of the project tribunals cannot do so.[86]

[84] The Independent Housing Ombudsman scheme was established by the Housing Act 1996, s 51 and Sched 2. The scheme aims to provide a means of investigation and redress for tenants of social landlords, and offers a range of ADR services. Further information is available at www.ihos.org.uk.

[85] The Lands Tribunal (Fees) Rules (SI 1996 No 1021) (as amended by the Lands Tribunal (Fees) (Amendment) Rules 2002 (SI 2002 No 270)) set out the fee structure in the Lands Tribunal. The Commonhold and Leasehold Reform Act 2002, Sched 12 para 9 makes provision for regulations requiring the payment of fees in certain cases before the Leasehold Valuation Tribunal, such fees not to exceed £500 or such other amount as is specified in the regulations. The Land Registration Act 2002, s 113 makes provision for regulations prescribing fees to be paid in respect of proceedings before the Adjudicator. No regulations have yet been made. No fees are charged by the remaining project tribunals.

[86] The Lands Tribunal has power to make orders for costs under the Lands Tribunal Act 1949, s 3(5). These powers are constrained by other enactments. The Land Compensation Act 1961, s 4(1) constrains the Lands Tribunal's powers to award costs in cases of disputed compensation for the compulsory purchase of land where the acquiring authority has made an offer of compensation or the claimant has offered to accept a particular sum as compensation. The Commonhold and Leasehold Reform Act 2002, s 175(6), states that in appeals from the Leasehold Valuation Tribunal, the Lands Tribunal may not award costs unless it is of the opinion that a party has acted unreasonably. The Lands Tribunal's costs regime is different in cases heard under its simplified procedure. The Commonhold and Leasehold Reform Act 2002, Sched 12 para 10 also restricts the power of Leasehold Valuation Tribunals to award costs only when it is of the opinion that a party has acted unreasonably. The Land Registration Act 2002, s 109(3), expressly provides that the Adjudicator's procedural rules may make provision for payment of costs. The remainder of the project tribunals do not have the power to award costs.

5.66 One consequence of our proposed rationalisation of the project tribunals would be that there would be inconsistencies in the fees charged for different cases due to the tribunals' present fee structures. The issue of whether tribunals should charge fees and the level of any fees is a matter of policy for the Government and not a matter of law reform for the Law Commission. It would not be appropriate for the Law Commission to make specific recommendations about the issue of fees in tribunals. However, we recommend that if our proposals are accepted, there should be a departmental review of the fees charged in the project tribunals.

5.67 There are competing arguments about the costs powers that tribunals should properly have. On one hand, the power to award costs is linked to case management powers and the ability to impose costs sanctions would greatly strengthen the case management power of the project tribunals. On the other hand, there is a policy argument that tribunals should be as accessible as possible for users in terms of costs. One possibility might be that it would be appropriate for the reformed Lands Tribunal to be able to award costs but not for the PVT to be able to do so. This in turn raises questions about whether any power of the reformed Lands Tribunal to award costs should relate to both its first instance and its appellate jurisdictions. Another relevant distinction as regards costs powers may be whether a tribunal hears disputes between private parties or disputes between citizens and the state.

5.68 Given the policy arguments, we make no recommendation about whether the tribunals should have powers to award costs. We note, however, that the tribunals' power to award costs might need to be re-examined if our proposals for a unified system were accepted. One option might be for primary legislation to state that rules may provide for the tribunals to be able to make costs orders, as is the case for the Adjudicator under section 109 of the Land Registration Act. The Rules Committee, if one were set up as we propose,[87] would be able to contribute to the proper approach to the costs powers of the PVT and the reformed Lands Tribunal.[88]

Enforcement powers

5.69 Some consultees raised the issue of the enforcement powers of tribunals.[89] A distinction must be drawn between the enforcement of case management directions and the enforcement of the tribunals' final orders. Case management directions are often enforced through costs orders. Under our proposals, the question of the tribunals ability to award costs would to a large extent be a matter for our proposed Rules Committee.[90]

5.70 In the tribunal system as a whole, tribunals do not usually have the power to enforce their orders. Tribunal users usually have to at least obtain permission from

[87] See paras 5.42 – 5.46 above.

[88] Provided primary legislation contained a power enabling regulations to make provision for the award of costs. See as an example the Employment Tribunals Act 1996, s 13(1)(a) or the Land Registration Act 2002, s 109.

[89] For example, the Residential Property Tribunal Service.

[90] See paras 5.42 – 5.46 above.

the county court for the enforcement of orders.[91] The enforcement powers of the county court include the power to grant warrants of execution, delivery and possession, power to make attachments of earnings orders and committal powers.[92]

5.71 We do not think it would be appropriate for tribunals to have the power to make committal orders. However, it might be desirable for tribunals to have some enforcement powers so that users did not have to apply to the county court. There should be a consistent approach across the tribunal world as a whole, and within the confines of this project we are not able to consider the arguments about what enforcement powers tribunals should have. We recommend that the Government considers looking at issues relating to the enforcement powers of tribunals.

[91] See, for example, the Lands Tribunal Rules 1996 (SI 1996 No 1022), reg 32, applying the provisions of the Arbitration Act, s 66 to proceedings in the Lands Tribunal. Section 66 states that an award made pursuant to an arbitration agreement may, by leave (now called permission) of the court, be enforced in the same manner as a judgment or order of the court to the same effect. See also the Commonhold and Leasehold Reform Act 2002, Sched 12 para 11 which states that procedure regulations may provide for decisions of Leasehold Valuation Tribunals to be enforceable, with the permission of the county court, in the same way as orders of such a court. No such procedure regulations have yet been made. Note the slightly different provision in the Land Registration Act 2002, s 112 which states that " a requirement of the adjudicator shall be enforceable as an order of the court."

[92] CPR Sched 2 CCR Ord 25, 26, 27 and 29, incorporated into the Civil Procedure Rules by virtue of CPR 50.

PART VI
JURISDICTIONAL ISSUES

INTRODUCTION

6.1 The Leggatt report concluded that there appeared to be confusing overlaps of jurisdiction between the courts and the project tribunals. The report's concern was that overlaps of jurisdiction could be confusing for tribunal users and could provide the opportunity for forum shopping.[1] On this basis, we conducted a preliminary review of the jurisdictional relationships between the courts and the project tribunals in our consultation paper. We asked for information from consultees about whether the areas of overlap we identified were problematic in practice.[2] We are particularly grateful to consultees for their helpful assistance in identifying potentially difficult areas of jurisdictional overlap.

6.2 There was a general recognition among consultees that there are some jurisdictional overlaps between the courts and the project tribunals, but consultees did not note any of these to be greatly problematic in practice.[3] No responses identified problematic overlaps between the project tribunals themselves. One area of overlap was noted between the Lands Tribunal and the tax tribunals.[4]

6.3 The specific areas of overlap noted by consultees are discussed at paragraphs 6.4 – 6.56 below in relation to each of the project tribunals. In the main these are relatively minor issues which do not arise frequently. A general issue of some importance is the close relationship between dispute resolution in the Leasehold Valuation Tribunal and the county courts. We consider that any difficulties that arise from this close relationship can be dealt with by way of case management powers. This is discussed at paragraphs 6.59 – 6.65 below. We also consider in paragraphs 6.67 – 6.73 some wider issues relating to the resolution of housing disputes.

INDIVIDUAL AREAS OF JURISDICTIONAL OVERLAP

6.4 We discuss here the areas of jurisdictional overlap that were noted by consultees as being potentially problematic, in relation to each of the project tribunals.

Leasehold Valuation Tribunal

6.5 Of the eight project tribunals, it is the Leasehold Valuation Tribunal which has had the closest relationship with the county court. It is therefore in the Leasehold Valuation Tribunal that problems with overlapping jurisdictions have been most likely to occur. Difficulties have historically arisen in relation to the Leasehold

1 Leggatt report, para 3.30.

2 Consultation Paper No 170, Part V.

3 The Constitutional and Administrative Law Bar Association said of the jurisdictional overlaps discussed in our consultation paper: "although those identified exist, we have not found them to present a problem in practice." The Council on Tribunals "is not aware of any particular problems that are not already being addressed."

4 See paras 6.38 – 6.40 below.

Valuation Tribunal's service charge jurisdiction, which, we were told, caused problems for tribunal users. These problems have now been resolved by the Commonhold and Leasehold Reform Act 2002. This is discussed at paragraphs 6.7 – 6.11 below.

6.6 The remaining potentially difficult issues relate to jurisdictions which we termed in our consultation paper "interlocking" jurisdictions. This is where the Leasehold Valuation Tribunal and the county court determine separate but closely related matters relating to one dispute. For example, under section 20 of the Leasehold Reform Act 1967, county courts have jurisdiction to determine a tenant's entitlement to acquire the freehold in leasehold enfranchisement cases. Under section 21 of the Act, the Leasehold Valuation Tribunal has jurisdiction to determine disputes in relation to the amount payable for the freehold so acquired. A potential problem relating to interlocking jurisdictions also arise in the Rent Assessment Committee. Any problems that have arisen have not, however, been noted as difficulties that occur frequently.

Service charge jurisdictions

6.7 The overlap between the Leasehold Valuation Tribunal and the county court in service charge cases has historically caused the greatest difficulties for users in practice. The difficulties stemmed from the Leasehold Valuation Tribunal's jurisdiction under sections 19(2A) and 19(2B) of the Landlord and Tenant Act 1985 to determine the reasonableness of the costs underlying a service charge.[5] Such difficulties are now academic as the Leasehold Valuation Tribunal has been given a broad jurisdiction to hear all aspects of service charge disputes under the Commonhold and Leasehold Reform Act 2002.

6.8 Difficulties arose because of the limited nature of the Leasehold Valuation Tribunal's service charge jurisdiction. The jurisdiction did not extend to questions of liability to pay service charge, only to its reasonableness. The case of *Gilge v Charlesgrove Securities Ltd*[6] illustrates the limited nature of the Leasehold Valuation Tribunal's service charge jurisdiction.[7] Because of doubts about the Leasehold Valuation Tribunal's proper jurisdiction, the case was heard concurrently as proceedings of the county court and an appeal from the Leasehold Valuation Tribunal to the Lands Tribunal.[8] The case concerned tenants being charged the rent for the flat of a resident caretaker as service charge. One of the issues was whether this rent was recoverable under the service charge provisions of the lease. It was decided in the Lands Tribunal proceedings that the Leasehold Valuation Tribunal's proper jurisdiction was to determine whether the cost of the caretaker's rent was reasonably incurred and not to determine whether, on a proper

[5] Inserted by the Housing Act 1996.

[6] [2001] L&TR 17 (LT).

[7] See also *Wandsworth LBC v Manuel* [2002] 2 E.G.L.R. 128 (Chancery Division) and *Stapel v Bellshore Property Investments Ltd (No.1)* [2000] C.L.Y. 3948 (Leasehold Valuation Tribunal) for further discussion of the limitations of the Leasehold Valuation Tribunal's service charge jurisdiction.

[8] The case was heard by Judge Rich QC, a member of the Lands Tribunal and a circuit judge.

construction of the lease, the tenants were liable to pay the caretaker's rent as service charge.

6.9 The problems of a limited service charge jurisdiction were exacerbated by *Daejan v London Leasehold Valuation Tribunal.*[9] In this case the landlord and tenants were in dispute about the amount of service charge, but the tenants had paid the service charge because of their concerns about the forfeiture of the lease. The Court of Appeal decided that Leasehold Valuation Tribunals had no jurisdiction to decide cases in respect of service charges that had already been paid. This further limited the service charge jurisdiction of the Leasehold Valuation Tribunal.[10]

6.10 The Commonhold and Leasehold Reform Act 2002[11] remedies this problem. The Act repeals section 19(2A) and section 19(2B) of the Landlord and Tenant Act 1985 and inserts a new section 27A which contains a broader jurisdiction for the Leasehold Valuation Tribunal. When it is in force, section 27A will allow Leasehold Valuation Tribunals to decide whether a service charge is or would be payable and other aspects of service charge liability.[12] Section 27(A)(2) confirms that the Leasehold Valuation Tribunal has jurisdiction whether or not payment has been made, thus nullifying the problem raised by *Daejan v London Leasehold Valuation Tribunal.*[13] This jurisdiction will be parallel to that of the county court[14] but this seems sensible, given that the county court may need to consider service charge issues in the context of wider landlord and tenant disputes.

6.11 Our opinion is that the new section 27A will solve the problems noted above. We therefore make no recommendations.

Enfranchisement and new leasehold jurisdictions

6.12 Legislation provides for leaseholders to be able, in certain circumstances, to buy the freehold of their property or to extend their leases under statutory procedures. The Leasehold Reform Act 1967 facilitates the acquisition by leaseholders of the freehold of houses and the extension of leases of houses owned under certain long leases. The Leasehold Reform, Housing and Urban Development Act 1993[15] facilitates collective enfranchisement of flats by leaseholders and the acquisition of individual qualifying leaseholders of new leases. Under the Landlord and Tenant Act 1987, leaseholders also have the right of first refusal on the disposal by the landlord of any estate or interest in the premises. The Leasehold Valuation Tribunal and the county courts each have jurisdiction over certain types of

[9] [2001] All ER 142; [2001] EWCA Civ 1095.

[10] The Residential Property Tribunal Service said of the situation relating to the service charge jurisdiction that it has "caused difficulty and disappointment for parties and has made the jurisdiction awkward to administer."

[11] The majority of the Act is not yet in force.

[12] Inserted by the Commonhold and Leasehold Reform Act 2002, s 155.

[13] [2001] All ER 142; [2001] EWCA Civ 1095.

[14] Section 27(A)(7) provides that the jurisdiction of the Leasehold Valuation Tribunal is in addition to any jurisdiction of the court.

[15] As amended by the Commonhold and Leasehold Reform Act 2002.

disputes relating to these enfranchisement and new lease cases. There are potentially some problems relating to this "interlocking" jurisdiction.[16]

6.13 One area of overlap which was raised in response to consultation is that which arose in the case of *Ellis v Logothetis.*[17] Problems arose in that case because proceedings were started both in the Leasehold Valuation Tribunal and in the county court. The tenant commenced proceedings to obtain a new lease of her flat under the Leasehold Reform, Housing and Urban Development Act 1993. By section 48(1) of the Act, when any of the terms of the acquisition of the lease remain in dispute after the expiry of a certain time period, the Leasehold Valuation Tribunal has jurisdiction to determine the matters in dispute. The tenant applied to the Leasehold Valuation Tribunal under section 48(1). By section 48(3) of the Act, when all the terms of the acquisition of the lease have been agreed or determined by a Leasehold Valuation Tribunal under section 48(1), but a new lease has not been entered into, the county court can make an order with respect to the performance or discharge of the parties' obligations.[18] The tenant also applied to the county court under section 48(3) for an order for a new lease.

6.14 The county court and the Leasehold Valuation Tribunal each decided the issues before them. The court's decision was dated 29 June 1999 and the Leasehold Valuation Tribunal's decision 29 November 1999. The two decisions were not consistent with each other. The county court held that the parties had not at any time reached any final agreement on the terms of acquisition. The Leasehold Valuation Tribunal held that there had been final agreement on all terms except the premium. On appeal from the Leasehold Valuation Tribunal, the Lands Tribunal held that the decision of the county court created an issue estoppel that bound the Leasehold Valuation Tribunal.[19] The question of whether or not all the terms of the acquisition had been agreed was decided in the county court and could not be re-argued before the Leasehold Valuation Tribunal.

6.15 This difficulty in *Ellis v Logothetis*[20] is not one that should arise often. The two procedures in section 48 are designed to be complementary and mutually exclusive. As noted by the Lands Tribunal in the case, the Leasehold Valuation Tribunal only has jurisdiction where there are terms that have not been agreed and the county court only has jurisdiction where the terms have been agreed or determined by the Leasehold Valuation Tribunal. So long as there are terms still in dispute, the Leasehold Valuation Tribunal has jurisdiction. When all terms have been agreed or determined by the Leasehold Valuation Tribunal, the county court has jurisdiction. If a similar situation to the case did arise, issue estoppel could be brought into play.

[16] A full discussion of potential areas of overlap is set out in Consultation Paper No 170, Appendix F.

[17] Lands Tribunal ref LRA/3/2000.

[18] This is said by the Lands Tribunal in the case to be a power for the county court "in effect to order specific performance of the new lease once the terms of the acquisition have been determined."

[19] See paras 6.24 – 6.26 below for a discussion of issue estoppel.

[20] Lands Tribunal ref LRA/3/2000.

6.16 A similar division of jurisdiction between the Leasehold Valuation Tribunal and the county court exists in relation to applications for collective enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993. Under section 24(1), if any of the terms of acquisition remain in dispute for two months after the relevant counter-notice has been served, it is within the jurisdiction of the Leasehold Valuation Tribunal to decide the terms in dispute. By section 24(3), where all the terms of acquisition have been either agreed between the parties or determined by the Leasehold Valuation Tribunal, but a binding contract has not been entered into incorporating those terms within a specified time period, the court then has jurisdiction to make an appropriate order. In *Penman v Upavon Enterprises Ltd,*[21] the Court of Appeal noted that the court's jurisdiction to make an order only arose once all the terms of the acquisition had been either agreed or determined by the Leasehold Valuation Tribunal.[22]

6.17 The Residential Property Tribunal Service commented in their response to our consultation that it may be confusing for parties that different types of application must be made to different forums in leasehold enfranchisement and new lease cases. The Residential Property Tribunal Service say, however, that although in practice there are occasions when applications must be adjourned pending a county court decision on an issue, the difficulties are not acute. These matters have not been noted to be problematic by tribunal users. Given that there are no major difficulties in practice and the system works well as a whole in practical terms, we do not recommend the transfer of any aspects of these disputes either to the courts or to the RPTS tribunals. We do think it is important, however, that appropriate tools are in place to resolve any difficulties that can occasionally arise. We discuss this further at paragraphs 6.59 – 6.65 below.

New right to manage jurisdiction

6.18 A similar type of interlocking jurisdiction between the county court and the Leasehold Valuation Tribunal is apparent in the new Right to Manage jurisdiction to be introduced under the Commonhold and Leasehold Reform Act 2002.[23]

6.19 This right allows leaseholders of flats to take over the management of the buildings in which their flat is situated without having to prove any fault on the part of their landlord. This is the first time leaseholders have had this right. The legislation provides that the leaseholders are to exercise the right through an "RTM Company", that is a Right to Manage Company. The RTM Company must give notice inviting qualifying tenants who are not members of the company to participate. It must then give a "claim notice" to the landlord and other parties specified in the legislation. A person given a claim notice may serve a counter-notice admitting or denying the right to manage. If the counter-notice alleges that

[21] [2002] L&TR 10; [2001] EWCA Civ 956.

[22] Note also Leasehold Reform, Housing and Urban Development Act 1993, s 90(2) and s 91(2) on the general areas of jurisdiction of the courts and the Leasehold Valuation Tribunal under the Act.

[23] This is a new no fault right to manage under the Commonhold and Leasehold Reform Act 2002, Part 2, Chapter 1 (ss 71-113).

the RTM company is not entitled to exercise the right, the RTM company may apply to the Leasehold Valuation Tribunal.

6.20 The Act confers jurisdiction on both the Leasehold Valuation Tribunal and the county court in respect of the right to manage. The Leasehold Valuation Tribunal has the following jurisdictions:

(1) determination of entitlement of right to manage,[24]

(2) order where landlord not traceable,[25]

(3) determination in relation to costs,[26]

(4) determination of accrued uncommitted service charges[27] and

(5) determination of objection to approval.[28]

6.21 The county court has power to make an order requiring a person who has failed to comply with a requirement imposed on him relating to the Right to Manage to make good the default.[29]

6.22 There does not seem to be any direct overlap between the jurisdictions of the Leasehold Valuation Tribunal and the county court as none of the Leasehold Valuation Tribunal jurisdictions relate to obligations under the Act. This is, however, another example of interlocking jurisdictions. The Residential Property Tribunal Service said in their consultation response that "it is possible that the divide of jurisdictions between the county court and the Leasehold Valuation Tribunal in the new Right to Manage cases may cause some initial confusion."

6.23 As with the enfranchisement cases, we think that the proper legal tools being available to deal with any such confusion should mean that initial difficulties do not inconvenience tribunals users to too great an extent.

Issue estoppel

6.24 Issue estoppel is one of the tools that has been used to overcome jurisdictional overlap problems. Issue estoppel is a common law doctrine, the effect of which is essentially that issues which have been judicially decided cannot then be re-litigated by the same parties. Issue estoppel arises "where in a judicial decision between the same parties some issue which was in controversy between the parties and was incidental to the main decision has been decided."[30] The requirements for

[24] Commonhold and Leasehold Reform Act 2002, s 84(3).

[25] Commonhold and Leasehold Reform Act 2002, s 85.

[26] Commonhold and Leasehold Reform Act 2002, s 88(4).

[27] Commonhold and Leasehold Reform Act 2002, s 94(3).

[28] Commonhold and Leasehold Reform Act 2002, s 99(1).

[29] Commonhold and Leasehold Reform Act 2002, s 107.

[30] *Carl Zeiss Stiftung v Rayner & Kellert Ltd (No 2)* [1967] 1 AC 853, 934.

issue estoppel are summarised by the Lands Tribunal in *Ellis v Logothetis.*[31] They are that:

(1) The same question has been decided.

(2) The judicial decision which is said to create the estoppel is final.

(3) The parties to the judicial decision were the same persons as the parties to the proceedings in which the estoppel was raised.

6.25 Issue estoppel was used by the Lands Tribunal in *Ellis v Logothetis*[32] to prevent the Leasehold Valuation Tribunal making an inconsistent decision to the county court when both forums were seised of the case. The Lands Tribunal decided that the question of whether or not all the terms of the acquisition of the new lease had been agreed were decided in the county court and could not be re-argued before the Leasehold Valuation Tribunal.

6.26 Issue estoppel applies generally between courts and tribunals. For example, in *Crown Estate Commissioners v Dorset County Council,*[33] estoppel was said to apply in relation to a decision of the Commons Commissioners. The Commons Commissioners had decided that certain road verges were part of the highway and not common land. In a subsequent court action the Crown Estate Commissioners sought to claim that the verges had never been dedicated as highway. The court held that subject to the principles that a tribunal of limited jurisdiction could not conclusively determine the limits of its own jurisdiction, the decision of an inferior tribunal with a limited jurisdiction and a strictly limited function to perform was capable of creating an issue estoppel. The Crown Estate Commissioners were therefore estopped from asserting that the road verges were not part of the highway by the Commons Commissioners' decision.

Case management powers

6.27 Under the Commonhold and Leasehold Reform Act 2002, the courts have power to transfer proceedings to the Leasehold Valuation Tribunal where necessary. The Act provides that where, in any proceedings before a court, there falls for determination a question falling within the jurisdiction of the Leasehold Valuation Tribunal, the court may by order transfer to the Leasehold Valuation Tribunal so much of the proceedings as relates to the determination of that question.[34] The court can either then dispose of the rest of the proceedings or adjourn the disposal of all or any remaining proceedings as relate to the determination of that question by the Leasehold Valuation Tribunal.[35] When the Leasehold Valuation Tribunal has determined the question, the court may give effect to that determination in an order of the court. Provision is made for procedural regulations prescribing the

[31] Lands Tribunal ref LRA/3/2000.

[32] Lands Tribunal ref LRA/3/2000. See paras 6.13 – 6.15 above for discussion of this case.

[33] [1990] Ch. 297.

[34] Schedule 12 para 3.

[35] The courts have wide case management powers including the power to adjourn hearings, and also to stay proceedings generally or until a specified date or event. See CPR 3.1(2).

procedure to be followed in a Leasehold Valuation Tribunal if the court transfers a question to it in this way, as well as for rules of court prescribing the procedure to the followed in court in connection with the transfer.

6.28 There is no power for the Leasehold Valuation Tribunal to refer cases to the courts. Leasehold Valuation Tribunals do, however, have power to postpone or adjourn hearings of their own motion or at the request of the parties. They are not allowed to do so at the request of one party only unless they consider it reasonable to do so, having regard to the grounds on which that request is made and the time at which the request is made and the convenience of the parties.[36] These powers allow Leasehold Valuation Tribunals to adjourn proceedings if parties need to make an application to the county court for an issue that is not within the jurisdiction of the Leasehold Valuation Tribunal.

6.29 We consider at paragraphs 6.59 – 6.65 below whether any extension might be needed to these powers.

Rent Assessment Committee

Overlaps with county court

6.30 Rent Assessment Committees essentially hear appeals from decisions of the rent officer relating to fair rents for regulated tenancies under the Rent Act 1977[37] and decide cases about open market rents for assured and assured shorthold tenancies in certain circumstances under the Housing Act 1988.[38] The Residential Property Tribunal Service noted that there can be difficulties with overlapping jurisdictions in cases in which the status of a tenant may be in dispute.

6.31 While the Rent Assessment Committee has power to determine fair rents for Rent Act tenancies, it is only the county court that can make a determination on whether a tenant is in fact a Rent Act tenant.[39] The Rent Assessment Committee may therefore sometimes have to adjourn its determination on fair rent pending an application to the county court for adjudication on this issue. In Housing Act cases too, a binding determination on status can only be given by the county court.[40] There can therefore be a tension between the parties' desire for a binding determination on status by the county court, and the Rent Assessment Committee's determination of the rent.

[36] Rent Assessment Committees (England and Wales) Regulations 1971 (SI 1971 No 1065), reg 8 and Rent Assessment Committee (England and Wales) (Leasehold Valuation Tribunal) Regulations 1993 (as amended), reg 8. The two sets of regulations are used for different cases in the Leasehold Valuation Tribunal depending on the source of the jurisdiction. Note that the Commonhold and Leasehold Reform Act 2002, Sched 12 para 1 makes provision for new regulations about the procedure of Leasehold Valuation Tribunals. No regulations have yet been made.

[37] Schedule 11 para 9.

[38] Section 22 in relation to assured shorthold tenancies. Section 14(1) in relation to assured tenancies.

[39] Rent Act 1977, s 141(1)(a).

[40] By the Housing Act 1988, s 40 the county court has jurisdiction to hear and determine any question arising under any provision of Chapters I to III and V or ss 27 and 28 of the Act other than a question falling within the jurisdiction of the Rent Assessment Committee.

Case management powers

6.32 This overlap with the courts is not said to be a major problem, and we think that case management powers should assist in resolving any difficulties that do arise in practice. The Rent Assessment Committee has power to adjourn its proceedings pending the outcome of any county court proceedings.[41] The court and the committee are prevented in any case from making incompatible decisions by issue estoppel.[42] Possible extensions to case management powers are discussed at paragraphs 6.59 – 6.65 below.

Rent Tribunal

6.33 The Rent Tribunals rarely sit in practice and therefore any overlap is of little practical importance. This has been confirmed by the Residential Property Tribunal Service. We therefore make no recommendations about any jurisdictional overlaps relating to the Rent Tribunals.

Lands Tribunal

Compensation and damages in tort

6.34 A person with an interest in land that is "injuriously affected" by the execution of works carried out by an acquiring authority is entitled to be compensated for the loss suffered. The Lands Tribunal has jurisdiction under section 10(1) of the Compulsory Purchase Act 1965 to determine any dispute that arises in relation to the compensation payable in respect of an injurious affection.

6.35 In our consultation paper, we referred to the Law Commission consultation paper on compulsory purchase.[43] In the compulsory purchase consultation paper, a potential overlap was noted resulting from the fact that compensation for injurious affection under section 10 of the Compulsory Purchase Act 1965 can only be claimed in respect of the *lawful* actions of the acquiring authority. If the authority has acted *negligently*, the correct claim is in tort to the High Court.[44] This may in some cases lead to doubt about the correct forum for a claim.

6.36 In *Chapelwood Estates Ltd v City Greenwich Lewisham Rail Link plc,*[45] land was damaged during tunnelling operations for a railway link extending the Docklands Light Railway. Proceedings were started both in the High Court for damages and in the Lands Tribunal for compensation, but the parties settled the case before either hearing could take place, with costs to be ascertained by the Lands Tribunal. If the parties had not settled, this could have resulted in two hearings, with the possibility of conflicting outcomes.

[41] Rent Assessment Committees (England and Wales) Regulations 1971 (SI 1971 No 1065), reg 8.

[42] See paras 6.24 – 6.26 above for a discussion of issue estoppel.

[43] Towards a Compulsory Purchase Code (1) Compensation – A Consultative Report, Consultation Paper No 165. See para 5.10.

[44] *Imperial Gaslight and Coke Co v Broadbent* (1859) 7 HLC 600, 612; *Wildtree Hotels Ltd v Harrow LBC* [2001] 2 AC 1, 7.

[45] Lands Tribunal ref LCA/187/2000; [2002] EWCA Civ 925.

6.37 Consultation Paper No 165 proposed that the Lands Tribunal should have jurisdiction to determine any claim, whether common law or statutory, relating to damage to land or the use of land, where it arises out of substantially the same facts as a compensation claim which has been referred to the Lands Tribunal.[46] We repeat this recommendation.

Taxation disputes

6.38 Conflicts have arisen in capital gains tax cases concerning exempt and non-exempt parts of consideration for the sale of land which include a private residence. This is a type of interlocking jurisdiction between the Lands Tribunal and either the General or Special Commissioners of Income Tax. If there is a dispute as to the method of apportionment of the land for tax purposes, the correct forum is the General or Special Commissioners. If the dispute is as to the values of the apportioned parts of land, the correct forum is the Lands Tribunal.[47] This can raise the issues of which forum the parties should go to first. The Lands Tribunal has told us that in practice the number of cases heard under this jurisdiction is very small.[48]

6.39 The determination of land valuation disputes in the context of tax appeals has been mentioned in the Tax Appeals Tribunals consultation paper.[49] That consultation paper noted that capital gains tax appeals involving a question of the value of land in the UK have to be referred to the Lands Tribunal. By contrast, non-capital gains tax appeals involving disputes over the valuation of land (with a couple of exceptions),[50] or capital gains tax appeals involving the valuation of land outside the UK are heard by the General or Special Commissioners. The tax tribunals consultation paper queried whether it would be more sensible for all appeals involving a dispute over the valuation of land, regardless of the type of tax involved, to be referred to the tax tribunals.[51] In other words, it suggested removing this jurisdiction from the Lands Tribunal.

6.40 Responses to our consultation paper did not specify whether they considered this jurisdiction should be allocated to the tax tribunals or remain in the Lands Tribunal. In the light of the wider consultation of the Tax Appeals Tribunals project with those experienced in the working of tax tribunals, we make no recommendation in this area.

[46] Towards a Compulsory Purchase Code: (1) Compensation – A Consultative Report, Consultation Paper No 165, paras 8.30 – 8.32 and Proposal 14.

[47] Taxes Management Act 1970, s 47. This provision is substituted by the Taxes Management Act 1970, s 46D in relation to proceedings relating to the year 1996-1997 and subsequent years of assessment and in relation to an accounting period ending on or after 1 July 1999, by the Finance Act 1996, s 136 and Sched 22, paras 7 and 12.

[48] The Lands Tribunal's website lists only two cases in this jurisdiction.

[49] Published by the Lord Chancellor's Department in March 2000. See section 3, para 6.7.

[50] The exceptions are Inheritance Tax, the Business Expansion Scheme and the Enterprise Investment Scheme.

[51] The summary of consultation responses, published by the Lord Chancellor's Department in March 2003, states that of the responses that commented on the appeal route for disputes over the value of land, two thirds felt that these appeals could in the first instance be heard by the Special Commissioners rather than the Lands Tribunal.

Arbitration jurisdiction

6.41 Parties to a non-domestic rating appeal can theoretically apply directly to the Lands Tribunal by referring the issue to arbitration, rather than the appeal being heard first by the Valuation Tribunal and then appealed to the Lands Tribunal. The parties may agree to refer the question to arbitration under the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations[52] and then agree to appoint the Lands Tribunal as the arbitrator under section 1(5) of the Lands Tribunal Act 1949. It has been said that "this power can be a convenient one in cases which the parties intend from the outset to take before the Lands Tribunal, as it saves both the time and the expense of a hearing before the Valuation Tribunal."[53] This is borne out by earlier cases which have been referred to the Lands Tribunal for arbitration. For example, in *Leeds University v City of Leeds and Burge (V.O.)*,[54] the case was referred directly to the Lands Tribunal by way of arbitration[55] and it was agreed that the Lands Tribunal hearing would be conducted as if it were an appeal from the local valuation courts (as the Valuation Tribunals then were). This looks like a type of "leapfrogging" from the first tier tribunal direct to the Lands Tribunal. This case concerned the ratings value of the main university site and other buildings owned by Leeds University, and the large amount of property concerned may have been the reason why the case was referred directly to the Lands Tribunal.[56]

6.42 Although this procedure has been used in the past, we have been told that it is now hardly used in practice. The National President of the National Association of Valuation Tribunals said that "to our knowledge this provision has never been used." He gave as the reason for this that the parties welcome an inexpensive first tier tribunal. He suggested that in the past, Valuation Tribunal hearings were used by the parties to prepare for the hearing before the Lands Tribunal but now that there has been an increase in the quality of decisions many complex cases are determined by the Valuation Tribunal without further appeal.

6.43 In our proposed structure, it would be possible to transfer complex cases from the PVT to the reformed Lands Tribunal where appropriate. There should be no need for parties to attempt to circumvent the first tier hearing by this arbitration route. It would not be desirable to take away the Lands Tribunal's arbitration jurisdiction or the right of Valuation Tribunal users to have their case resolved by arbitration if they wish to do so. We therefore make no recommendations in relation to any jurisdictional overlap caused by the possibility of Valuation Tribunal cases being decided by arbitration in the Lands Tribunal.

[52] SI 1993 No 291. Reg 48.

[53] *Ryde on Rating and the Council Tax* (1996), para F[306] – [320].

[54] (1962) 9 RRC 336.

[55] The case was referred to the Lands Tribunal for arbitration under the Local Government Act 1948, s 50 (now repealed).

[56] For another example of an arbitration reference by a local valuation court to the Lands Tribunal, see *Lever Brothers, Port Sunlight, Ltd v Bright (V.O.)* (1961) 9 RRC 164, in which two arbitration references to the Lands Tribunal were heard together with an appeal from the local valuation court.

Adjudicator to HM Land Registry

Overlaps with High Court

6.44 The jurisdiction of the Adjudicator overlaps that of the High Court in that the Adjudicator has power to make any order the High Court could make for the rectification or setting aside of certain documents.[57] The documents which the Adjudicator can rectify or set aside are documents which affect a qualifying disposition[58] of a registered charge or estate in land; contracts to make such a disposition; or documents that effect a transfer of an interest which is the subject of a notice in the register.[59] An order of the Adjudicator operates under the same general law and has the same effects as an order of the High Court.[60]

6.45 We think that these overlaps are sensible and helpful to tribunal users. The Law Commission report leading to the Land Registration Act 2002, stated that "under the present law, the registrar has no power to rectify or set aside a document. On occasions this has meant that he has had to refer a matter to the High Court that he could otherwise have resolved. To avoid the cost and delay that such a reference is likely to entail, it was considered appropriate that the Adjudicator should have a limited power to rectify and set aside conveyancing (but not other) documents."[61]

6.46 The Adjudicator also has power to make the same orders as the High Court in certain adverse possession cases. Under the Land Registration Act 2002, a person can apply to be registered as the proprietor of a registered estate in land if he or she has been in adverse possession for ten years.[62] The Act allows the registered proprietor of the land to object to this application.[63] The Adjudicator can determine the dispute if the Land Registry registrar is unable to dispose of it by agreement.[64] In this case, if the Adjudicator finds that an equity of estoppel[65] has arisen, but that the squatter should not in the circumstances be registered as registered proprietor, the Adjudicator must determine how the equity due to the

[57] Land Registration Act 2002, s 108(2).

[58] Under the Land Registration Act 2002, s 108(3), a qualifying disposition is a registerable disposition or a disposition that creates an interest that may be the subject of a notice in the register.

[59] Land Registration Act 2002, s 108(2). By s 32(1), a notice is an entry in the register in respect of the burden of an interest affecting a registered estate or charge. Examples are the burden of a lease, an easement or a restrictive covenant.

[60] Land Registration Act 2002, s 108(4).

[61] Land Registration for the 21st Century: A Conveyancing Revolution (2001) Law Com No 271, paras 16.8 – 16.10.

[62] Land Registration Act 2002, Sched 6 para 1.

[63] Under s 73, anyone may object to an application to the registrar.

[64] Land Registration Act 2002, s 73(7).

[65] The applicant would have to establish that an equity had arisen in his or her favour, by showing that the registered proprietor encouraged or allowed the applicant to believe that he or she owned the land in question; that the applicant acted to his or her detriment to the knowledge of the proprietor and that it would be unconscionable for the proprietor to deny the applicant the rights which he or she believed he or she had. See the explanation in Land Registration for the 21st Century: A Conveyancing Revolution (2001) Law Com No 271, para 14.40, and for an account of the principles of proprietary estoppel see *Megarry & Wade's Law of Real Property* (6th ed 2000), Chapter 13.

applicant should be satisfied.[66] For that purpose the Adjudicator can make any order that the High Court could make in the exercise of its equitable jurisdiction.[67] We think this is a power that the Adjudicator properly needs to determine these cases.

Case management powers

6.47 Any problems that did arise because of overlapping jurisdictions could be dealt with by case management powers. The Land Registration Act 2002 envisages that the Adjudicator will refer some cases to the courts. Section 110 allows the Adjudicator, in a dispute relating to an objection to a registration application,[68] to direct a party to start proceedings in court instead. The Law Commission has explained that one reason these powers might be used by the Adjudicator is if there are other issues between the parties already before the court.[69]

6.48 Draft rules make provision for the adjournment of proceedings before the Adjudicator following such a direction and for the Adjudicator to close the proceedings (or that part of the proceedings which was referred to the court) without making a substantive decision once he has been informed of the court's decision.[70]

6.49 Draft rules also state that if parties have commenced proceedings in the courts other than on a direction of the Adjudicator, they must serve a notice on the Adjudicator providing him with information about the court proceedings. Notice must also be served on the Adjudicator of the court's final decision and on the court of any substantive decision of the Adjudicator on the matter.[71]

6.50 We think this power to refer cases to the court is a useful one in the context of jurisdictional overlaps between courts and tribunals, and that a similar rule could be used in our proposed PVT and reformed Lands Tribunal. We discuss this further at paragraph 6.61 below.

Agricultural Land Tribunal

6.51 Consultees did not alert us to any major jurisdictional overlaps between the courts and the Agricultural Land Tribunals. A Chairman of the Agricultural Land Tribunal said in his consultation response that "the tenancy succession, bad husbandry and land drainage jurisdictions of the Agricultural Land Tribunal do not present any obvious problems of overlap. There is really no opportunity for

[66] Land Registration Act 2002, s 110(4).

[67] Land Registration Act 2002, s 110(4). The court's possible remedies are discussed in Land Registration for the 21st Century: A Conveyancing Revolution (2001) Law Com No 271, para 14.40. There is a wide range of relief which the court can give, including compensation.

[68] That is, a dispute referred to the Adjudicator under the Land Registration Act 2002, s 73(7).

[69] Land Registration for the 21st Century: A Conveyancing Revolution (2001) Law Com No 271, para 16.20. See also paras 4.84 – 4.85 above.

[70] Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules: a consultation on draft rules, Lord Chancellor's Department (April 2003). See draft rules 8 and 9.

[71] See footnote 70 above. Draft rule 10.

forum shopping which is clearly the mischief to which Leggatt believes overlap gives rise."

6.52 Consultees did alert us to one relatively minor area in which the overall system of agricultural dispute resolution causes difficulties. This is the relationship between Agricultural Land Tribunals and agricultural arbitrators under section 28 of the Agricultural Holdings Act 1986. The Act makes provision for a landlord to give notice to quit to the tenant of an agricultural holding and to state that the notice is being given by reason of the tenant's failure to comply with a previous notice to remedy a breach of the tenancy.[72] The tenant can serve a counter-notice, with the result that the notice to quit will not have effect without the consent of the Agricultural Land Tribunal.[73] The Act also states that the tenant can serve on the landlord a notice requiring the validity of the reason stated in the notice to quit to be determined by arbitration.[74] If so, any counter-notice already served is of no effect but the tenant may serve another counter-notice after the arbitration.[75] The tenant therefore has two possible courses of action. Scammell and Densham's Law of Agricultural Holdings comments that the landlord's original notice to remedy "can set off a chain reaction which is very costly and difficult to control."[76]

6.53 The problem referred to here does not appear to stem from difficulties with jurisdictional overlaps, but rather from a complex set of procedures which would perhaps need to be looked at in the context of agricultural dispute resolution mechanisms as a whole. We therefore make no recommendations on this point.

6.54 We noted in our consultation paper the relationship between the Agricultural Land Tribunals and other mechanisms of dispute resolution in relation to agricultural land, especially arbitration.[77] Although there are a number of different mechanisms for the resolution of agricultural disputes, no jurisdictional problems arise as a result. The dispute resolution mechanisms are completely separate. Broadly speaking, if an agricultural tenancy was created before 1 September 1995, the Agricultural Land Tribunal will be the correct forum. If the tenancy was created on or after this date, arbitration will be the correct dispute resolution mechanism under the Agricultural Tenancies Act 1995. Different rules apply for tenancies of dwelling houses, when the dispute will be heard either by the Rent Assessment Committee, the county court or the High Court. Any issues of overlap in relation to agricultural dwelling houses are the same as those already noted in relation to the RPTS tribunals.

Valuation Tribunal

6.55 We noted in Part IV some differences in the dispute resolution mechanisms used to hear disputes relating to local government finance. Disputes as to the contents

[72] Section 28(1) and Sched 3 Case D.

[73] Section 28(2).

[74] Agricultural Holdings Act 1986, s 28(4).

[75] Agricultural Holdings Act 1986, s 28(4)(a) and s 28(4)(b).

[76] *Scammell and Densham's Law of Agricultural Holdings* (8th ed 1997), p204.

[77] Consultation Paper No 170, paras 5.7, C.27 – C.42 and the jurisdiction chart on p 55.

of non-domestic rating valuation lists are heard by the Valuation Tribunal with appeal to the Lands Tribunal, whereas disputes as to liability are heard by the magistrates' courts[78] with appeal to the High Court. This can be contrasted with council tax, where disputes both as to the contents of valuation lists and as to liability[79] are heard by the Valuation Tribunal, with a right of appeal on a point of law to the High Court.[80] Proposed provisions in the Local Government Bill[81] would mean that non-compliance with a statutory notice requesting information from a ratepayer about rental values might give rise to a civil penalty to be imposed by the valuation officer with an appeal to the Valuation Tribunal. This would replace the current criminal sanction imposed by the magistrates' courts.[82]

6.56 We think that these issues would best be examined in the context of a Government review of local government finance adjudication. In Part IV we recommended that the Government should consider setting up such a review.

ACTION ON JURISDICTIONAL OVERLAPS

General conclusions

6.57 Although consultees noted a number of areas in which jurisdictional overlaps could arise in the relation to the project tribunals, none of these were said to be greatly problematic in practice. We have repeated an earlier Law Commission recommendation in relation to the Lands Tribunal[83] and have recommended that the Government consider examining the overall scheme of local government finance adjudication including certain aspects of the Valuation Tribunals.[84] One of the main problem areas in the past was the differing jurisdictions for the resolution of service charge disputes.[85] These difficulties have been recognised by parliament and a solution enacted in the Commonhold and Leasehold Reform Act 2002.[86]

6.58 There is undoubtedly a close relationship between the disputes decided in the Leasehold Valuation Tribunal and some of those decided in the county court. In a number of areas, the Leasehold Valuation Tribunal either has concurrent jurisdiction with the county court or there is a type of interlocking jurisdiction.

[78] Under the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations (SI 1989 No 1058), reg 12.

[79] Local Government Finance Act 1992, s 16.

[80] Consultation Paper No 170, para 5.16.

[81] Clause 71 confers jurisdiction on the Valuation Tribunal (as amended on report in the House of Lords on 17 July 2003).

[82] Local Government Finance Act 1988, Sched 9 para 5, as amended.

[83] See para 6.37 above.

[84] See paras 4.36 and 6.55 – 6.56 above.

[85] This appears to have been one of the main concerns of the Leggatt report which stated that "in some service charge cases, it appears to be common practice for the county court to hear the main issues of liability, but refer cases to the tribunal for valuations, which may then require the case to go back to the court for additional remedies." See the Leggatt report, Part II, section on Rent Assessment Panels, para 23. This problem has now been eliminated by Commonhold and Leasehold Reform Act 2002.

[86] Section 155, which inserts a new s 27A into the Landlord and Tenant Act 1985. See para 6.10 above.

However, as these have only caused occasional difficulties in cases before the tribunal and the system works satisfactorily in the majority of cases, we do not recommend that jurisdictions be transferred from the county court to the Leasehold Valuation Tribunal or vice versa. We think that the occasional difficulty in these jurisdictions can be appropriately resolved by good case management powers.[87] If our proposals for a unified PVT and reformed Lands Tribunal are accepted by the Government, it may be that more jurisdictions, including some currently exercised by the courts, could be transferred to these tribunals in the future.

Case management powers

6.59 We think that our proposed PVT and reformed Lands Tribunal should have a full set of case management powers. The basis of these powers should be contained in primary legislation with the detailed rules in secondary legislation. Powers should enable the courts to refer cases or parts of cases to the tribunals where appropriate, and likewise for the tribunals to be able to refer cases or parts of cases to the courts.

6.60 The power for the courts to refer cases to the tribunals could be similar to the power in Schedule 12 of the Commonhold and Leasehold Reform Act 2002. This gives the courts power to transfer cases or parts of cases to the Leasehold Valuation Tribunal. The relevant provisions can be summarised as follows.

(1) Where, in court proceedings, a question arises which is within the Leasehold Valuation Tribunal's jurisdiction, the court can transfer to the Leasehold Valuation Tribunal the part of the proceedings which is within the tribunal's jurisdiction.[88]

(2) The court can then either dispose of all or the remaining proceedings, or adjourn the court proceedings pending the Leasehold Valuation Tribunal's decision. This is within the discretion of the court.[89]

(3) When the Leasehold Valuation Tribunal has determined the question before it, the court may give effect to the tribunal's determination by way of court order.[90]

(4) There is provision for rules of court and procedure regulations to prescribe the procedures to be followed in the court and the Leasehold

[87] This is also the view put forward by the senior judiciary in their response to our consultation. They state that "where the same matter is to arise for decision in both a tribunal and a court of law we would expect case management powers to be exercised, on application by one or other of the parties in either the tribunal reference or in the court proceedings, to avoid duplication of proceedings."

[88] Paragraph 3(1)(a).

[89] Paragraph 3(1)(b).

[90] Paragraph 3(2).

Valuation Tribunal respectively in connection with a transfer.[91] No rules or regulations have yet been made.

6.61 The power for tribunals to refer cases to the courts could be similar to the power in section 110 of the Land Registration Act 2002. This allows the Adjudicator to direct parties to commence proceedings in the court instead of the Adjudicator deciding a matter himself.[92] The relevant provisions can be summarised as follows.

(1) In certain proceedings before the tribunal, the Adjudicator may, instead of deciding a matter himself, direct a party to commence proceedings before the court within a specified time.[93]

(2) There is power for rules to be made to make further provision about this reference to the courts, in particular about adjournment of proceedings before the Adjudicator pending the court's decision and powers of the Adjudicator if the parties fail to comply with his direction.[94]

6.62 No rules have yet been made. Draft procedural rules provide for the adjournment of proceedings before the Adjudicator following a referral to the court, and for the Adjudicator to close the proceedings before him (or that part of the proceedings which was referred to the court) without making a substantive decision once he has been informed of the court's decision.[95]

6.63 These draft rules also state that if the parties have commenced proceedings in the courts other than on a direction of the Adjudicator, they must serve a notice on the Adjudicator providing him with information about the court proceedings. Notice must also be served on the Adjudicator of the court's final decision and on the court of any substantive decision of the Adjudicator on the matter.[96]

6.64 The power to refer cases between the courts and tribunals exists in other territorial jurisdictions. The Residential Tribunal of New South Wales can transfer proceedings to the courts, and the courts can transfer matters to the tribunal.[97] Proceedings can be transferred if all the parties agree, or if the court or tribunal of its own motion or on the application of one of the parties directs.[98]

6.65 A range of case management powers, together with the doctrine of issue estoppel, could be used to oil the wheels between the courts and the tribunals where they

[91] Paragraphs 3(3) and 3(4).

[92] This power relates to cases arising from objections to applications under Land Registration Act 2002, s 73(7). See also paras 6.47 – 6.50 above.

[93] Section 110(1).

[94] Section 110(2).

[95] Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules: a consultation on draft rules, Lord Chancellor's Department (April 2003). See draft rules 8 and 9.

[96] See footnote 95 above. Draft rule 10.

[97] New South Wales Residential Tribunal Act 1998, s 23. Note that on 25 February 2002 the Residential Tribunal merged with the Fair Trading Tribunal to form the Consumer, Trader and Tenancy Tribunal.

[98] New South Wales Residential Tribunal Act 1998, s 23.

each have jurisdiction for different aspects of a dispute. We therefore propose that there should be power for the courts to refer matters to the tribunals or the tribunals to refer matters to the court where necessary. This power should be exercisable by the tribunals of their own motion or on the application of one or both of the parties. We would expect regulations to state whether proceedings should be adjourned pending the determination of issues in the other forum. Regulations requiring parties to notify the tribunals if applications are made to the court other than on the court's direction would also be useful.[99]

The role of a unified tribunals system

6.66 If our proposals for a unified tribunal structure were accepted, this might provide an opportunity for more jurisdictions to be allocated to tribunals rather than to the courts. We hope that our proposed PVT and reformed Lands Tribunal would over time become the natural forums for the adjudication of land, valuation and housing disputes. If important jurisdictional difficulties did arise in the future, the Government may decide that some court jurisdictions could be allocated to an PVT and a reformed Lands Tribunal.

HOUSING DISPUTES IN THE LEASEHOLD VALUATION TRIBUNAL AND IN THE COURTS

6.67 We have noted above a number of specific overlaps between the Leasehold Valuation Tribunal and the courts, for example in relation to enfranchisement disputes. In addition to these specific areas of overlap, there is also generally a close relationship between the county court's jurisdiction over housing disputes and the jurisdiction of the Leasehold Valuation Tribunal.

6.68 Both the county court and the Leasehold Valuation Tribunal adjudicate on disputes between landlords and tenants. For example, service charge disputes can be heard in the Leasehold Valuation Tribunal or in the county court.[100] Possession claims can only be adjudicated by the county court.[101] In any one area in dispute, it will be clear which is the correct forum. In service charge cases, it will usually be necessary to apply to the Leasehold Valuation Tribunal. Possession cases will always be heard in the county court. However, when the dispute between landlord

[99] This is similar to the requirement in the draft rules relating to the Adjudicator. See para 6.49 above.

[100] Landlord and Tenant Act 1985, s 27A as inserted by the Commonhold and Leasehold Reform Act 2002. The Act does not confer jurisdiction on the county court but s 27A(7) provides that the jurisdiction of the Leasehold Valuation Tribunal is in addition to any jurisdiction of a court. This would allow the county court to consider service charge matters in the course of the exercise of its own jurisdiction, most probably in debt proceedings.

[101] Note that before a lease can be forfeited for breach of covenant, the landlord must serve a notice under the Law of Property Act 1925, s 146(1). The Commonhold and Leasehold Reform Act 2002 s 168(1) imposes a new requirement that before such a notice can be served in relation to a long lease, s 168(2) of the Act must be satisfied. Long leases are defined in ss 76 and 77 of the Act. By s 168(4), one of the ways that s 168(2) can be satisfied is a determination by the Leasehold Valuation Tribunal that a breach of covenant has occurred. The Leasehold Valuation Tribunal therefore has jurisdiction to determine whether a s 146 notice can be served as a prelude to a forfeiture action. However, if proceedings are taken to obtain possession through forfeiture (or by any other means), these are proceedings in the courts.

and tenant involves more than one distinct issue, difficulties can potentially arise. The difficulties here are a wider example of the problems of interlocking jurisdictions that we noted in relation to the RPTS tribunals.

6.69 The main example of this in the cases has concerned the Leasehold Valuation Tribunal's service charge jurisdiction. Problems might arise where a single dispute between landlord and tenant includes issues of service charge and also other issues. In *Aylesbond Estates Ltd v MacMillan,*[102] the landlord commenced forfeiture proceedings in the county court against the tenant for non-payment of service charge and ground rent, and sought possession of the property. The tenant's defence was that the service charge was unreasonable, and she also counterclaimed for breach of the covenant of quiet enjoyment and nuisance. The tenant asked for the case to be transferred to the Leasehold Valuation Tribunal.[103] The Court of Appeal declined to transfer the case, as the tribunal only had jurisdiction to determine issues about the reasonableness of service charge[104] and not the other issues raised in the case. The fact that a referral of the service charge dispute to the Leasehold Valuation Tribunal would not dispose of the whole matter was one of the deciding factors in the court's refusal to order the transfer of the case.

6.70 In the *Aylesbond Estates Ltd* [105] case, the Court of Appeal was able to decide that the county court should adjudicate on all aspects of the dispute between the parties. This was because the case had been commenced in the courts rather than in the Leasehold Valuation Tribunal, and because the courts have a wider jurisdiction than the Leasehold Valuation Tribunal in landlord and tenant cases. The court has jurisdiction to adjudicate on issues such as forfeiture, breach of covenant and nuisance where the Leasehold Valuation Tribunal does not. The court retains its jurisdiction to adjudicate on service charge disputes.[106] Problems could arise, however, if a similar case were started in the Leasehold Valuation Tribunal. The Leasehold Valuation Tribunal has a more limited jurisdiction than the courts. If a service charge case were commenced in the Leasehold Valuation Tribunal which also involved questions of, for example, breach of covenant, the Leasehold Valuation Tribunal could not adjudicate on these additional issues.

6.71 Problems could also arise if concurrent proceedings were started in the Leasehold Valuation Tribunal and the county court. The problems associated with concurrent proceedings are shown in the case of *St Mary's Mansions Ltd v Iannacone.*[107] In this case, the tenants applied to the Leasehold Valuation Tribunal for a determination of the reasonableness of service charges. The landlord commenced concurrent proceedings in the county court, seeking forfeiture for non-payment of the service charges. In the court proceedings, the tenants were

[102] [1999] L&TR 17.

[103] Under the Landlord and Tenant Act 1985, s 31C (as amended by the Housing Act 1996).

[104] Note that the Leasehold Valuation Tribunal now has a wider jurisdiction in relation to service charge disputes under the Commonhold and Leasehold Reform Act 2002 – see further para 6.10.

[105] [1999] L&TR 17. Discussed at para 6.69 above.

[106] Commonhold and Leasehold Reform Act 2002, s 27A(7).

[107] Lands Tribunal ref LRX/11/2001.

defending the forfeiture action on the basis of unreasonable service charges. Both the county court and the Leasehold Valuation Tribunal were therefore seised of the service charge dispute. It was agreed that the county court proceedings should be heard first, as otherwise there would be duplicated arguments, extra preparation time and cost and the prospect of diverse findings. However, the Leasehold Valuation Tribunal then set a date for its hearing in advance of the date of the county court hearing. On the landlord's application for leave to appeal against this decision, the Lands Tribunal refused leave on the basis that the Leasehold Valuation Tribunal had not unlawfully exercised its discretion in fixing the hearing date.

6.72 If concurrent proceedings are commenced in the Leasehold Valuation Tribunal and the county courts and one set of proceedings has been decided, issue estoppel might apply.[108] Issue estoppel did not apply on the facts of *St Mary's Mansions Ltd v Iannacone*[109] as some of the parties to the county court proceedings were not party to the earlier Leasehold Valuation Tribunal determination.

6.73 This kind of difficulty is inevitable if jurisdictions in one subject area, that is housing disputes, are divided between courts and tribunals. Although any difficulties could be dealt with by case management powers, in the longer term perhaps a wider enquiry is needed into the possibility of allocating most or all of this type of dispute to one adjudicative body. The need for this type of wider enquiry was raised by some consultees. For example, the Civil Justice Council said "We do not believe that a conclusion can be reached on this question until one examines the rationalisation of the court system which deals with land valuation and housing" and that "the whole picture of adjudication in housing cases needs to be considered." This is an issue to which we intend to return at the end of our Renting Homes housing project.

[108] Issue estoppel is discussed at paras 6.24 – 6.26 above.

[109] Lands Tribunal ref LRX/11/2001.

PART VII
A LEGISLATIVE MODEL

INTRODUCTION

7.1 We have not been asked to produce a draft Bill with this report. However, some aspects of our proposed scheme would operate differently depending on how they were set out in legislation. The division between primary and secondary legislation would be especially important. We therefore set out in this Part our views about how any legislation relating to our scheme could be structured. If our proposed PVT and reformed Lands Tribunal were to be incorporated into a larger unified Tribunals Service, we presume that they would have to fit into the legislative scheme for that Service.

7.2 In this Part, we first consider the Council on Tribunals guidelines on the division of functions for primary and secondary legislation. Secondly, we briefly discuss the way in which the project tribunals have been established in legislation. Thirdly, we examine a possible model for our scheme in the Appeals Service legislation. Fourthly, we make suggestions for how we consider our scheme might be set out in legislation.

7.3 Many of the divisions between primary and secondary legislation are similar in most of the legislative schemes relating to tribunals that we have examined, and are therefore relatively uncontentious. Tribunals are usually set up in primary legislation. Of the Valuation Tribunal, which is a notable exception to this general rule, the Council on Tribunals has said that "it is more usual for provision to be made in the principal legislation itself for a nationwide system of tribunals the members of which are to be centrally appointed."[1] It is common for primary legislation to contain only a broad enabling power in relation to procedural rules with the details being left to secondary legislation.

7.4 Some of the divisions need to be more closely examined. We have considered the model of the Appeals Service tribunal, which has some similarities to our proposed unified scheme. The Appeals Service legislation leaves many matters to delegated legislation. This has the benefit of the flexibility which is a key feature of our proposed scheme. The counter-argument is that this may be at the cost of the opportunity for parliamentary scrutiny. This is discussed in paragraphs 7.39 and 7.40 below.

COUNCIL ON TRIBUNALS GUIDELINES

7.5 The Council on Tribunals Model Rules of Procedure for Tribunals[2] contains a checklist of matters to be considered when preparing legislation which establishes a tribunal or other adjudicative body. It sets out two lists of matters customarily

[1] Council on Tribunals Model Rules of Procedure for Tribunals (1991) Cm 1434, as amended in February 2000, para 1. The Council on Tribunals latest model rules were published as a consultative draft in January 2003.

[2] Council on Tribunals Model Rules of Procedure for Tribunals (1991) Cm 1434, as amended in February 2000.

included in the Principal Legislation (Part A) and matters for consideration for inclusion in rule-making powers (Part B).

7.6 The Council on Tribunals points out that there are no hard and fast rules about whether matters should be in primary or secondary legislation, and that there is a variety of practice in particular about the appropriate legislative place for matters to do with the establishment of tribunals,[3] tribunals' jurisdictions and principal powers, appeals and the composition of tribunals. They point out that decisions should be taken in the light of the requirements of the particular subject matter of a tribunal's jurisdiction, the political interest in particular issues and the need to respond to that interest.

7.7 The Council on Tribunals provides detailed lists of matters customarily included in primary and secondary legislation. This report summarises some of the matters contained in them, as follows.

Primary legislation

7.8 Part A, matters customarily contained in primary legislation, includes matters such as

(1) the establishment of the tribunal,

(2) the tribunal's jurisdiction and principal powers,

(3) restrictions on rights to appeal or apply,

(4) composition of the tribunal, and

(5) staff.

7.9 It is suggested that primary legislation relating to the composition of tribunals might include the rules about different categories of members and panels, the composition of the tribunal for hearings, provision for the composition of the tribunal in special cases or when exercising a special jurisdiction and provision for transfer of cases between tribunals having the same jurisdiction.

Secondary legislation

7.10 Part B, matters for consideration for inclusion in rule-making powers includes

(1) matters relating to the establishment, composition and sittings of the tribunal which are not provided for in primary legislation,

(2) general provision for practice and procedure, and

(3) specific procedural rules such as rules about evidence, hearings, delegation of powers to registrar and staff, fees and costs and so on.

[3] The example cited is the Valuation Tribunals, established under the rule-making power in the Local Government Finance Act 1988, Sched 11. This is discussed further at paras 7.17 – 7.18 below.

THE PROJECT TRIBUNALS

7.11 The majority of the project tribunals are established in primary legislation. Provisions about the composition of the tribunals are also mainly contained in primary legislation. The exception is the Valuation Tribunal, the rules about which are almost entirely contained in secondary legislation. The summaries below only give an indication of how some aspects of the tribunals are set out in legislation. It should be noted that the Government has announced a new Independent Judicial Appointments Commission to recommend candidates for appointments as judges, which will apply to tribunal membership.[4]

Lands Tribunal

7.12 The Lands Tribunal is established by the Lands Tribunal Act 1949. The qualifications for the tribunal's President and members are set out in the Act.[5] The rules as to tribunal composition are contained in a flexible power in the Act which states that the jurisdictions of the tribunal are to be exercised "by any one or more of its members",[6] but this is not greatly expanded upon in secondary legislation.[7] The Act also sets out the appeal route.[8] Secondary legislation sets out the detail of the procedural rules applicable in cases before the tribunal.[9]

Commons Commissioners

7.13 The Commons Commissioners are established by the Commons Registration Act 1965.[10] Commons Commissioners are appointed by the Lord Chancellor and must have legal qualifications.[11] The matter of which Commons Commissioner is to hear any individual case is determined by the Chief Commons Commissioner.[12] Secondary legislation contains procedural rules for hearings.[13]

[4] The Government announced on 12 June 2003 that a new Independent Judicial Appointments Commission would be established to recommend candidates for appointment as judges. See press release "Modernising Government – Lord Falconer appointed Secretary of State for Constitutional Affairs" dated 12 June 2003, available on www.number-10.gov.uk. A consultation paper has recently been published on how the Commission could be established. This states that the Commission will be responsible for the full range of appointments currently made by the Lord Chancellor, including tribunal appointments. See Department of Constitutional Affairs, Constitutional Reform: a new way of appointing judges (July 2003), para 53.

[5] Section 2(2).

[6] Section 3(1).

[7] The Lands Tribunal Rules 1996 (SI 1996 No 1022), r 3 simply gives the President power to substitute members, gives the chairman of a tribunal the same powers as the President to substitute members and gives a member of a tribunal selected to hear a case the power to do anything, in relation to that case, which the President had power to do under the rules.

[8] Sections 3(4) and 3(11).

[9] Lands Tribunal Rules 1996 (SI 1996 No 1022).

[10] Section 17.

[11] Under the Commons Registration Act 1965, s 17(1)(a), Commons Commissioners must have a 7 year general legal qualification.

[12] Section 17(2).

[13] Commons Commissioners Regulations 1971 (SI 1971 No 1727).

Adjudicator to HM Land Registry

7.14 The Adjudicator is established by the Land Registration Act 2002.[14] The Act prescribes the tribunal's jurisdiction[15] and the appeal route.[16] As the Adjudicator is a single post, case allocation rules are not needed. Provision is made in the primary legislation for rules prescribing procedure,[17] and there is a power for fees to be prescribed by order.[18]

RPTS Tribunals

7.15 The RPTS tribunals are established by the Rent Act 1977.[19] The Act contains a power for the Secretary of State to draw up panels of persons to act as chairs and members[20] (to consist of persons appointed by the Secretary of State and the Lord Chancellor).[21] One out of these persons is to be nominated as the President of the panel and one or more person as Vice-President or Vice-Presidents.[22] The Rent Act 1977 requires tribunals to be made up of chairman and one or two other members.[23] Secondary legislation sets out procedural rules relating to tribunal determinations and hearings.[24]

Agricultural Land Tribunal

7.16 The Agricultural Land Tribunals are established by the Agriculture Act 1947.[25] The membership and constitution of individual tribunals is also contained in the Agriculture Act 1947.[26] Members of the Agricultural Land Tribunals are to be drawn from different panels drawn up by the Lord Chancellor,[27] and the Act

[14] Section 107.

[15] Section 108.

[16] Section 111.

[17] Section 109. No procedural rules have yet been promulgated. See Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules: a consultation on draft rules, Lord Chancellor's Department (April 2003).

[18] Section 113.

[19] Schedule 10.

[20] Schedule 10, para 1. No qualifications are prescribed.

[21] Schedule 10, para 2.

[22] Schedule 10, para 3. The persons are nominated by the Secretary of State. No qualifications are prescribed.

[23] Schedule 10, para 5. Under para 5, in certain circumstances, the chairman may sit alone. See para 5.49 above.

[24] Rent Assessment Committees (England and Wales) Regulations 1971 (SI 1971 No 1065); Rent Assessment Committee (England and Wales) (Leasehold Valuation Tribunal) Regulation 1993 (SI 1993 No 2408) as amended by Rent Assessment Committee (England and Wales) (Leasehold Valuation Tribunal) (Amendment) Regulations 1997 (SI 1997 No 1854); Leasehold Valuation Tribunals (Service Charges, Insurance or Appointment of Managers Applications) Order 1997 (SI 1997 No 1853).

[25] Section 73.

[26] Schedule 9.

[27] Schedule 9, paras 14 and 15.

prescribes the qualifications or expertise required of these members.[28] The Act states that the composition of members for each hearing of the Agricultural Land Tribunal shall be a chairman or deputy chairman and one person from each of the panels of experts in agricultural land.[29] Secondary legislation contains procedural rules related to tribunal hearings.[30]

Valuation Tribunal

7.17 The Valuation Tribunals are different from the project tribunals discussed above in that the Valuation Tribunals are largely set up in secondary legislation. Schedule 11 of the Local Government Finance Act 1988 makes provision for Valuation Tribunals to be established.[31] The primary legislation lists a number of matters that may be set out in secondary legislation but does no more than lay out the bare framework of the Valuation Tribunals scheme.

7.18 The secondary legislation that enacts these matters is the Valuation and Community Charge Regulations 1989.[32] These regulations establish the Valuation Tribunals[33] and provide for the Secretary of State to determine the number of members of each tribunal.[34] The regulations provide that individual tribunals shall be made up of three members, to include at least one chairman, or to members where the parties agree.[35] The regulations also set out procedural rules.

THE APPEALS SERVICE LEGISLATION

7.19 A useful model in considering legislation for a unified tribunals structure for land, valuation and housing cases is the primary and secondary legislation that set up the Appeals Service. In some ways the creation of the Appeals Service is similar to our proposals for the creation of a unified system for the project tribunals. The Appeals Service is a unified tribunal created by the Social Security Act 1998. This Act merged five pre-existing tribunals[36] and set up an executive agency for administration. There is a common procedure for all cases[37] and a ticketing system for the selection of appropriate members to hear cases.

7.20 The relevant legislation is the Social Security Act 1998 and the Social Security and Child Support (Decisions and Appeals) Regulations 1999.[38] The following is only

[28] By para 14, deputy chairs must have the same qualifications as chairs, who must have a 7 year general qualification. By para 15, the wing members must be persons representing the interests of farmers or persons representing the interests of owners of agricultural land.

[29] Paragraph 16.

[30] Agricultural Land Tribunals (Rules) Order 1978 (SI 1978 No 259).

[31] Schedule 11, para 1.

[32] SI 1989 No 439.

[33] Regulation 3.

[34] Regulation 4(1).

[35] Regulation 25.

[36] These were the Social Security Appeal Tribunal, Child Support Appeal Tribunal, Disability Appeal Tribunal, Medical Appeal Tribunal and Vaccine Damage Tribunal.

[37] There are some small differences in child support cases.

[38] SI 1999 No 991.

a broad outline of the relevant parts of the detailed provisions in the legislation. It will be noted that the Appeals Service legislation sets out the broad framework of the system in primary legislation leaving some of the details to be filled in by secondary legislation.

Primary legislation

Establishment of the tribunal

7.21 The Appeals Service tribunal is established in primary legislation. Primary legislation sets out the Presidential system, the broad membership structure and sets up the framework for the allocation of cases to members. The details of the necessary qualifications for members, and of how individual tribunals are to be constituted for hearings is left to secondary legislation.

7.22 Section 4 of the Social Security Act 1998 sets up the unified tribunal by transferring the functions of the five original tribunals to the tribunal constituted under the Act. Section 5 provides for the appointment of the President by the Lord Chancellor,[39] and states the qualifications the President must have.[40] This is supplemented by Schedule 1, which sets out details to do with the President's tenure of office, remuneration, officers and staff, the functions of the President and appeal tribunal clerks.

7.23 Under section 6, the Lord Chancellor is to constitute a panel of persons to act as the members of the tribunals. The panel is to be composed of such persons as the Lord Chancellor thinks fit to appoint (in the case of medical practitioners after consultation with the Chief Medical Officer).[41] The panel is to include persons possessing such qualifications as may be prescribed by regulations with the concurrence of the Lord Chancellor.[42] The number of persons appointed to the panel and the terms and conditions of their appointment is to be determined by the Lord Chancellor with the consent of the Secretary of State.[43]

7.24 Section 7 states that an appeal tribunal is to consist of one, two or three members drawn by President from the panel drawn up under section 6.[44] The member or at least one member must have a prescribed legal qualification.[45] Where an appeal tribunal has more than one member, the President can nominate one of the members as chairman.[46] Provision is made for regulations to deal with the

[39] Section 5(1).

[40] Section 5(2).

[41] Section 6(2).

[42] Section 6(3).

[43] Section 6(4).

[44] Section 7(1).

[45] Section 7(2). The prescribed legal qualification is that the person must have a general qualification under the Courts and Legal Services Act 1990, s 71 or be an advocate or solicitor in Scotland.

[46] Section 7(3).

composition of appeal tribunals and the procedure to be followed in allocating cases among differently constituted tribunals.[47]

7.25 The details about the panels and the composition of appeal tribunals are contained in regulations 35 and 36 of the regulations, discussed in paragraphs 7.34 – 7.35 below.

Appeals system

7.26 Primary legislation sets up the appeal structure from the initial decision to the Appeals Service tribunal, from that tribunal to the Social Security and Child Support Commissioners, and from the Commissioners to the Court of Appeal. This is a similar appeal structure to that which would operate in our proposed system for appeals from the PVT to the Lands Tribunal, and onwards to the Court of Appeal. The more practical mechanics of the appeal system are left for regulations.

7.27 Section 12 provides for appeal from the initial decision to the appeal tribunal. Provision is made for regulations to prescribe how and when appeals can be brought.[48]

7.28 Section 14 provides for onward appeal from the tribunal including the grounds for appeal,[49] who can appeal,[50] the powers of the Commissioner on the appeal,[51] the provisions for the permission requirement.[52] The Act provides for regulations to set out the way and the time in which appeals are to be brought and applications to be made for permission to appeal.[53]

7.29 Section 15 provides for further appeals from the Commissioner to the court (normally the Court of Appeal in England and Wales).[54] It makes provision for a leave requirement,[55] and states who is entitled to bring a further appeal.[56] Regulations are to specify how and when applications for permission to appeal must be made.[57]

[47] The Social Security and Child Support (Decisions and Appeals) Regulations 1999 (SI 1999 No 991), reg 36.

[48] Section 12(7).

[49] Section 14(1).

[50] Sections 14(3) - 14(6).

[51] Section 14(8).

[52] Section 14(10).

[53] Section 14(11).

[54] Section 15(4)(a).

[55] Section 15(2).

[56] Section 15(3).

[57] Section 15(3).

Procedure

7.30 By section 16, regulations are to make provision for tribunal procedures.[58] Schedule 5 further empowers certain regulations to be made.

Secondary legislation

7.31 The Social Security and Child Support (Decisions and Appeals) Regulations 1999[59] is the secondary legislation made under the Social Security Act 1998. Those sections that are relevant for a consideration of possible legislation for our proposed scheme are as follows.

Procedure for bringing appeals

7.32 The regulations contain the detailed rules about when and how appeals can be made to the Appeals Service tribunal.

7.33 Regulation 31 contains the rules about the time limits within which an appeal is to be brought, and regulation 32 states how applications for extension of time are to be dealt with. Regulation 33 contains the practical details of how an appeal is to be made, including what an appeal notice must contain and where it must be sent.

Panels and composition of tribunals

7.34 Primary legislation contains broad provisions about the panel of members for the tribunal.[60] The details are set out in regulation 35 and Schedule 3. These provisions require those on the panel to have certain legal, medical, financial or disability qualifications.

7.35 Similarly, primary legislation contains only a broad power about the composition of individual appeal tribunals for each sitting of the tribunal.[61] Regulation 36 provides the details of how cases are to be allocated by the President to differently constituted tribunals. The regulation requires cases to be allocated to an appeal tribunal consisting of a medically qualified panel member and a legally qualified panel member in certain cases;[62] a financially qualified panel member and a legally qualified panel member in certain other cases[63] and so on.

Procedure in tribunal hearings

7.36 The regulations contain a number of rules relating to the procedures to be followed in tribunal hearings and in the determination of cases generally. It is not necessary to summarise all of these rules here. As noted in paragraph 5.40 above, there are two rules that relate only to child support appeals,[64] but the remainder of

[58] Section 16(1).

[59] SI 1999 No 991.

[60] Social Security Act 1998, s 6. See para 7.23 above.

[61] Social Security Act 1998, s 7. See para 7.24 above.

[62] Regulation 36(2).

[63] Regulation 36(3).

[64] Regulations 44 and 45.

the rules relate to any type of case that is before the tribunal. There is therefore essentially a common set of procedures for cases that were previously within the jurisdiction of different tribunals.

Appeals

7.37 Regulation 58 sets out the details of applying for permission to appeal to a Commissioner from the tribunal.

The Appeals Service legislation as a model

7.38 We think that the Appeals Service legislation is a good starting point for a legislative model for the PVT and the reformed Lands Tribunal. It is a relatively modern example of legislation that has been used to set up a unified tribunal by bringing together previously separate tribunals. It is therefore similar to the system which our proposals aim to achieve. In most ways, the Appeals Service legislation as a model seems uncontroversial. Primary legislation is used to establish the tribunal, to set out the tribunal's jurisdictions and to make provision for appeal routes. Regulations set out matters of procedure in tribunal hearings. However, the scheme differs from other schemes establishing tribunals and from the Council on Tribunal's guidelines in placing the rules about tribunal membership and appointment and individual tribunal composition in secondary legislation.[65]

7.39 We think that there would be advantages in the rules about tribunal membership and individual tribunal composition being contained in secondary legislation. At present the members of the project tribunals have a diverse range of qualifications.[66] In a unified system, there would probably need to be some harmonisation of these qualification requirements either initially or over time. A key advantage of our proposed system is the opportunity for new jurisdictions to be added over time.[67] The addition of new jurisdictions might necessitate the addition of new members to the tribunal with different qualifications. If member qualification requirements are set out in secondary legislation, they can more easily be adapted in the future. We envisage that within our proposed system different types of cases would at least initially be heard by the same combination of members as hear each type of case now. An example is given at paragraph 5.54 above. If the government were to take a policy decision in the future that some types of cases should instead be heard by a different combination of members,[68] or if new jurisdictions were added to the tribunals, new rules would be needed to stipulate the appropriate tribunal composition and case allocation rules. Rules about tribunal composition and case allocation would be more flexible if they were contained in secondary legislation.

7.40 There are potentially disadvantages to a flexible scheme. It has been noted of the Appeals Service legislation that "the composition of appeal tribunals is now a

[65] The Social Security and Child Support (Decisions and Appeals) Regulations 1999 (SI 1999 No 991), regs 35 and 36.

[66] See para 5.29.

[67] This is discussed at para 4.23 above.

[68] See the example of local government finance cases, discussed at para 5.54 above.

matter of *secondary* legislation, with the concomitant lack of parliamentary scrutiny that this entails for any future changes."[69] The argument is that secondary legislation can be easily changed without it being scrutinised by parliament. However, as discussed at paragraph 7.39 above, there are good reasons for using delegated legislation in some circumstances.[70] We think that the benefits of flexibility would justify the use of secondary legislation to substantially set out the membership requirements and case allocation mechanisms in our proposed scheme.

LEGISLATION FOR OUR PROPOSED SCHEME

7.41 Based to a certain extent on the Appeals Service legislation and taking into account the Council on Tribunals guidelines, the current legislative schemes for the project tribunals and the aims and purpose of our proposed scheme, we consider here how our scheme could be enshrined in legislation.

Primary legislation

7.42 We think that the following matters could be contained in primary legislation in relation to our proposed scheme.

(1) The establishment of the reformed Lands Tribunal and the PVT.

(2) The initial jurisdictions of the tribunals, that is a transfer of the jurisdictions from the existing project tribunals to either the reformed Lands Tribunal or the PVT.[71] A complete list of each tribunal's jurisdiction could be contained in a Schedule to the primary legislation.

(3) The appeal route from the PVT to the reformed Lands Tribunal and from the Lands Tribunal to the Court of Appeal, and the establishing of a permission requirement.

(4) The qualification requirements for the President of the reformed Lands Tribunal and the President and Regional Chairs of the PVT.[72]

(5) Provision for the appointment of a legally qualified registrar, with powers and duties to be set out in secondary legislation.

(6) A provision establishing three panels of members for the tribunals: a legal panel, an expert panel and a lay panel. Provision for the Secretary of State to appoint members to the panels, with such qualifications or experience as shall be set out in regulations. We would expect the Government to either state in transitional provisions or to make an announcement that the

[69] Nick Wikeley, "Burying Bell: Managing the Judicialisation of Social Security Tribunals." (2000) 63 MLR 475, see p 486. Emphasis in the original.

[70] For a discussion of some of the general issues, see *Garner's Administrative Law* (8th ed 1996), Chapter 5.

[71] The jurisdictions that would be transferred to the reformed Lands Tribunal and those that would be transferred to the PVT are discussed at paras 4.14 – 4.15 above.

[72] We discuss the qualifications of the Presidents and the Regional Chairs at para 5.14 above.

existing members of the project tribunals would be the initial members of the PVT and reformed Lands Tribunal.

(7) A provision stating that an individual tribunal sitting of the PVT or the Lands Tribunal is to consist of one, two or three members drawn by President from the panels of members, with further details in regulations.

(8) A provision establishing member specialisms, with details of the experience needed to acquire each specialism to be set out in regulations.

Secondary legislation

7.43 We consider that the following matters should be contained in secondary legislation in our proposed scheme.

(1) Detailed procedural rules relating to hearings in the PVT and the Lands Tribunal.

(2) Details of the powers and duties of the registrar.

(3) Rules about qualifications needed for tribunal membership. The rules would set out the qualifications needed for the legal, professional and lay panels.

(4) Rules about what experience is needed to acquire each of the member specialisms.

(5) Rules about tribunal composition and case allocation. Rules should set out what types of cases are to be allocated to different types of members by reference to the three panels and the specialisms.[73]

Non-statutory rules

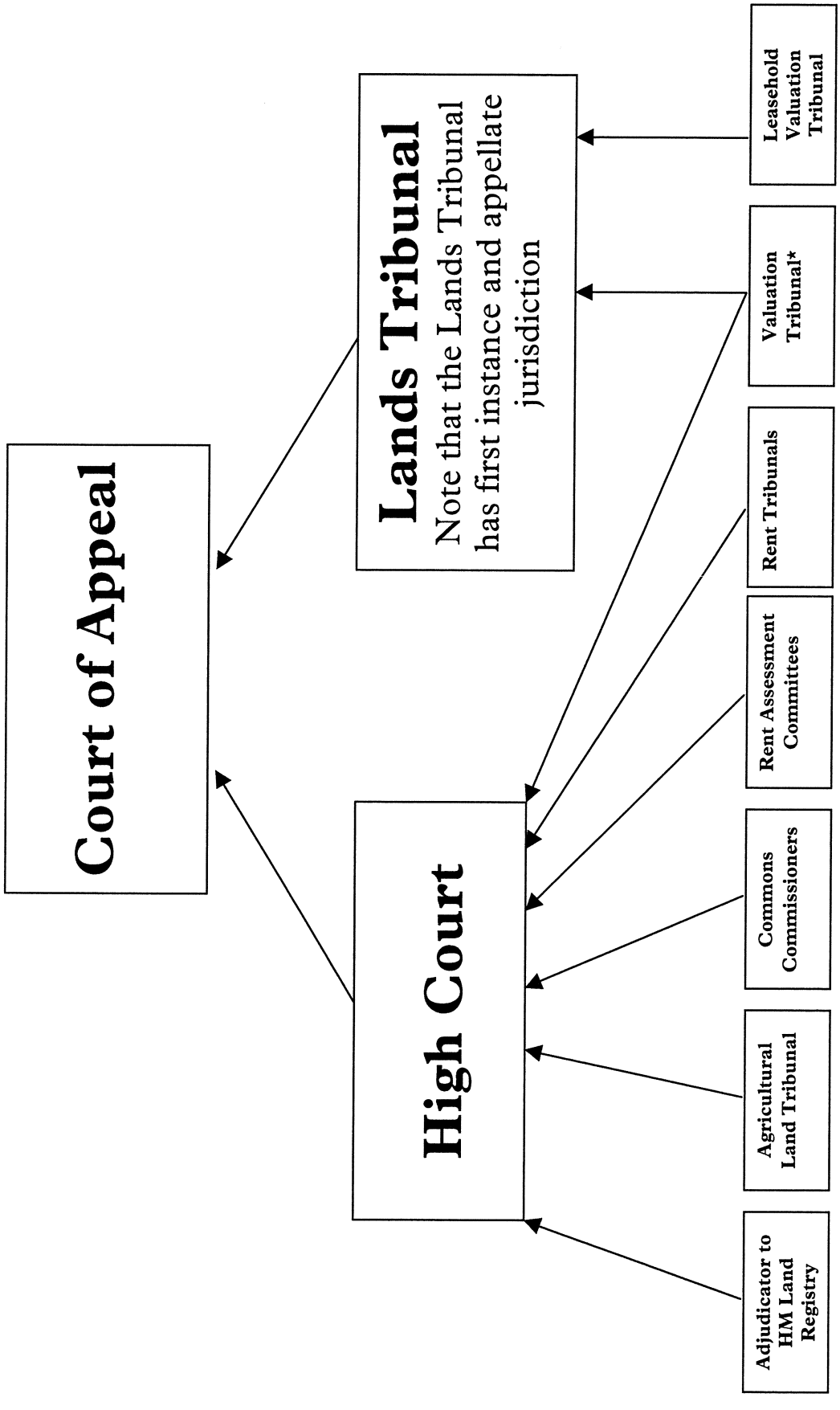
7.44 Practice Directions or perhaps internal tribunal rules would contain further non-statutory matters of detail, for example further rules about member specialisms. For an example of tribunal Practice Directions, see the Practice Directions of the Lands Tribunal.

(*Signed*) ROGER TOULSON, *Chairman*
HUGH BEALE
STUART BRIDGE
MARTIN PARTINGTON
ALAN WILKIE

MICHAEL SAYERS, *Secretary/Chief Executive*
30 July 2003

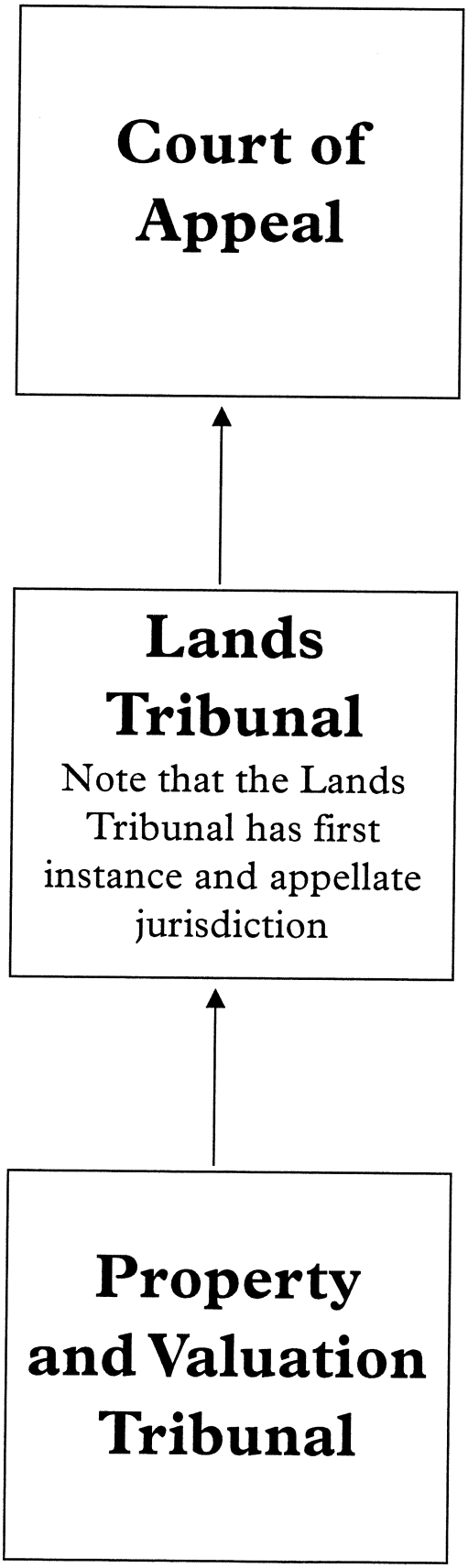
[73] For an example of how case allocation might work, see para 5.53.

APPENDIX A
CURRENT STRUCTURE OF THE LAND, VALUATION AND HOUSING TRIBUNALS



* Regarding the Valuation Tribunals, the High Court hears appeals related to community charge and council tax matters whereas the Lands Tribunal hears appeals relating to non-domestic rating, old rates and drainage rates.

APPENDIX B
PROPOSED STRUCTURE



APPENDIX C
LIST OF PEOPLE AND ORGANISATIONS WHO COMMENTED ON CONSULTATION PAPER NO 170

Category	Respondent	Role
Representatives of the project Tribunals	Bryan Massen	National Officer of Valuation Tribunal Management Board
	Judge Machin	Agricultural Land Tribunal chairman
	John Weatherill	Agricultural Land Tribunal chairman
	George Newsom	Agricultural Land Tribunal chairman
	Edward Cousins	Chief Commons Commissioner
	Residential Property Tribunal Service	
	National Association of Valuation Tribunals	
	Lands Tribunal	
		Total: 8
Representatives of Other Tribunals	Michael Harris	President of The Appeals Service (Face to face interview only – no written response)
	Michael Curry	Member of Northern Ireland Lands Tribunal
	Katrine Sporle	Chief Executive, The Planning Inspectorate
		Total: 3
Legal Practitioners Organisations	Bar Council Law Reform Committee	

Category	Respondent	Role
Legal Practitioners Organisations (cont'd)	Constitutional and Administrative Law Bar Association	
	The Law Society	
	Agricultural Law Association	
	Property Litigation Association	
		Total: 5
Legal Practitioners in Private Practice	Charles Harpum	Barrister at Falcon Chambers
	Falcon Chambers	
		Total: 2
Other Legal Practitioners	Andrew Gunz	Assistant Solicitor for the Inland Revenue (Represents Valuation Office Agency before the Valuation Tribunals and the Lands Tribunal)
		Total: 1
Professional Organisations	Central Association of Agricultural Valuers	
	Association of Retirement Housing Managers	
	Tenant Farmers Association	
	Farmers Union of Wales	
	Country Land and Business Association	

Category	Respondent	Role
Professional Organisations (cont'd)	The Royal Institution of Chartered Surveyors	
	Rating Surveyors' Association	
		Total: 7
Private Companies	J A Pye (Oxford) Ltd	Independent House Builders and Developers Submission prepared on their behalf by Matthews & Son, Chartered Surveyors
		Total: 1
Other groups	Legal Action Group	
	Campaign for the Abolition of Residential Leasehold	
		Total: 2
Government Departments	HM Land Registry	Will be responsible for referring disputes under LRA 2002 to the adjudicator
	Department for Environment, Food and Rural Affairs	Sponsor department of Commons Commissioners
	Department for Environment, Food and Rural Affairs	Sponsor department of Agricultural Land Tribunals
	Office of the Deputy Prime Minister	Sponsor department of RPTS tribunals
	[Anonymous government department]	User of Lands Tribunal
		Total: 5

Category	Respondent	Role
Other public bodies	Council on Tribunals	
	Housing and Land Committee of the Civil Justice Council	
	Housing Corporation	
		Total: 3
Judiciary	Lord Justice Brooke	
	Lord Gill	Former chairman of the Scottish Law Commission
	Sir Andrew Leggatt	
	The Association of District Judges	
	The Senior Judiciary	
		Total: 5
Academics	Brian Thompson	University of Liverpool
		Total: 1

Overall Total: 43

APPENDIX D
ADVISORY GROUP MEMBERS

Name	Position	Organisation
George Bartlett QC	President	The Lands Tribunal
Steve Benton	Official	Office of the Deputy Prime Minister
Phil Carey	Head of the Housing Private Sector Division	Office of the Deputy Prime Minister
Tony Chase	Chartered Surveyor	Gerald Eve (Property Advisers)
Edward Cousins	Chief Commons Commissioner	Commons Commissioners
Chris Davies	Policy Manager – Tribunals for Users	Department for Constitutional Affairs
John Ebdon	Deputy Chief Executive	Valuation Office Agency
Pat Fairbairn	Secretary to the Council on Tribunals	Council on Tribunals
Andrew Gunz	Solicitor	Inland Revenue Solicitors Office
Alex Hermon	Legal Adviser	Council on Tribunals
Nicole Johnston	Policy Project Manager, Tribunals for Users Programme	Department for Constitutional Affairs
Joe Ismail	Valuation Tribunals Establishments Officer	Office of the Deputy Prime Minister
Judith Marsden		Department for Environment, Food & Rural Affairs
Bryan Massen	National Officer	Valuation Tribunal Management Board
Siobhan McGrath	Senior President	Residential Property Tribunal Service
George Newsom	Representative Chairman	Agricultural Land Tribunal

Name	Position	Organisation
Charlotte Sewell	Head of Leasehold Reform Branch	Office of the Deputy Prime Minister
David Slesoritis	Vaulation Tribunals Establishments Officer	Office of the Deputy Prime Minister
Nick Wilson	Clerk to the Commons Commissioners	Department for Environment, Food & Rural Affairs
Paul Wood	Chairman	Valuation Tribunal Management Board

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