



Ministry  
of Justice

# **Administrative Justice and Tribunals: Final report of progress against the Strategic Work Programme 2013–2016**

March 2017



# **Administrative Justice and Tribunals: Final report of progress against the Strategic Work Programme 2013–2016**

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

March 2017



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## Ministerial Foreword

The administrative justice and tribunals system ensures that public bodies are held accountable for the decisions they make and the rights and entitlements of people are upheld. Over the past four years the Ministry of Justice has engaged with users and other Government departments to make sure the system continues to respond to change and work for everyone.

Since the first progress report was published in June 2014 the administrative justice landscape has seen some significant developments, including radical changes in fees policy and court and tribunal reform. Such was the pace of events that we did not publish a report in 2016, so the present document covers the complete period of the Strategic Work Programme from 2013 to 2016.

The Administrative Justice Forum (AJF) has played an important role in helping us to develop policies that make sure the tribunal system works for everyone, highlighting the importance of key principles such as proportionality and putting the user at the centre of the administrative justice process. I particularly welcome their insights into the importance of making effective use of feedback in ensuring our system continues to improve and provide better value for the taxpayer and the work they have led with other departments to embed that message.

The AJF will cease to operate in April 2017 and we will announce successor arrangements later this year. I would like to thank the AJF and particularly Jodi Berg OBE, the independent chair of the AJF, for their hard work and commitment over the last four years.

However the MoJ will continue to work with all stakeholders, including other Government Departments, ombudsman organisations, the voluntary sector and the judiciary, to improve the administrative justice system. Through the Courts and Tribunals reform programme, the Government is investing around £1 billion to transform the justice system to reduce bureaucracy, streamline systems and processes and help people to navigate their way to the best resolution for them. This includes making better use of technology to create a system that is able to respond promptly, effectively and proportionately to the needs of its users and reducing complexity in language, processes and systems to enable citizens to present their cases more easily.

**SIR OLIVER HEALD QC MP**

**Minister of State for Justice**

## **Introduction**

In December 2012 the Ministry of Justice (MoJ) published its Strategic Work Programme for Administrative Justice and Tribunals for the period between 2013 and 2016.

This report to the Public Administration and Constitutional Affairs Committee is the final report from the MoJ setting out progress against the objectives of the Strategic Work programme.

The previous report, published in June 2014, was to the then Public Administration Select Committee<sup>1</sup> and covered the period between August 2013 and April 2014. The report can be found at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/321468/cm8873-ajt-annual-report-2013-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/321468/cm8873-ajt-annual-report-2013-2014.pdf)

The Strategic Work Programme can be found at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217315/admin-justice-tribs-strategic-work-programme.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217315/admin-justice-tribs-strategic-work-programme.pdf)

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<sup>1</sup> The remit of PASC was to consider matters relating to the quality and standards of administration within the Civil Service. PACAC's remit is to examine constitutional issues and the quality and standards of administration within the Civil Service

## Background to Administrative Justice and Tribunals

The Strategic Work Programme, which as noted above covered the period 2013 to 2016, sets out the Government's aim of making the administrative justice and tribunals system work more effectively and efficiently for its users and for the taxpayers who fund it. This overarching aim is underpinned by the core principles of fairness, accessibility and efficiency.

In the main, the administrative justice system helps people to resolve disputes about decisions made by or on behalf of government and other public bodies. The administrative justice system is wide ranging. It includes the law that regulates public decision making, the processes and procedures for making decisions, alternative ways of resolving disputes (such as reconsideration of the decision administratively, referral to another body, or mediation between the parties), and the procedures for a final determination of the dispute and procedures for any onward challenge.

The administrative justice system includes tribunals and some courts, ombudsmen, and other independent complaint handlers and organisations which provide alternative dispute mechanisms such as mediation or arbitration. The issues dealt with by the administrative justice system touch on many areas of everyday life and include matters such as mental health, payment of benefits, tax, educational needs, immigration, and employment rights. As such, it is the area of justice which affects the lives of more people than any other, and it is key to the relationship between government and those who rely on the services provided by public bodies.

Tribunals are specialist judicial bodies which decide disputes in particular areas of law covering a wide range of subjects. With the needs of users in mind they are characterised by an approach which is deliberately less formal than is generally found in the courts. Between 1 April 2015 and 31 March 2016 over 408,000 applications and claims were made to tribunals managed by Her Majesty's Courts and Tribunals Service (HMCTS). Whilst applications to tribunals are generally against a decision made by a government department or agency, some tribunals, for example the Employment Tribunals and the Property Chamber, deal with party-versus-party disputes.

Whilst HMCTS administers tribunals within the unified tribunal system<sup>2</sup> (UTS), the Lord Chancellor also maintains oversight of those tribunals which sit outside the UTS such as the Valuation Tribunal England. A diagram of the UTS can be found at the end of this report and more information about some of the tribunals outside HMCTS can be found in Chapter 2.

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<sup>2</sup> Established under the Tribunals, Courts and Enforcement Act 2007.

## The Structure of this Report

The structure of this report follows the **six key areas** of the Strategic Work Programme, namely:

1. Governance – how MoJ works with other government departments (OGDs) to make sure the administrative justice system is transparent, fair and proportionate;
2. Overview of tribunals outside the UTS and new appeal rights – deciding when it is beneficial to transfer a tribunal to the UTS or to set up a new appeal right;
3. Funding of tribunals – making sure processes are efficient and fees are charged where appropriate;
4. Improving initial decision-making – working with OGDs to make sure the right decision is reached without the need for further redress mechanisms;
5. Enhancing proportionality – enabling people to use the most appropriate and economic method to resolve a dispute or to settle differences; and
6. Maintaining a user focus – putting people who use the administrative justice system at the centre of policy and procedures.

These in turn are underpinned by the following **ten strategic objectives**:

1. To strengthen arrangements with other departments and public bodies to oversee the development and delivery of administrative justice and tribunals policy;
2. To establish, encourage and maintain a user focus that supports open policy making;
3. To prioritise tribunal transfers into the unified structure on a cost/benefit basis and to maintain oversight of those that remain outside the system;
4. To ensure new appeal rights proposed by government are fair, efficient and accessible;
5. To scope, develop and implement clear, evidence based tribunal funding and fee models to reduce demands on the tribunal system;
6. To establish improved end-to-end performance data to drive better decision making;
7. To ensure information is made available to enable improvements in the quality of initial decision making;
8. To promote early and proportionate dispute resolution across government;
9. To develop improved information on, and insight into, administrative justice users to inform work on each strand of the strategy; and
10. To ensure our communications to users encourage efficiency, support fairness and enhance accessibility to the system, and explore opportunities for digitising administrative justice processes to deliver the best service for our users.

This report illustrates progress that the MoJ and its partners have made in delivering the Strategic Work Programme by reporting progress against the ten strategic objectives and outlining how it has met its wider strategic aim of making the tribunal system more accessible, transparent and efficient.

## Governance

- 1.1 The MoJ works with other departments and public bodies to oversee the development and delivery of administrative justice policy centred on providing a fair, transparent and accessible service for users. Over the period covered by this report the MoJ has continued to strengthen its relationships with OGDs including the Home Office (HO), Department for Work and Pensions (DWP), Department for Communities and Local Government (DCLG), Department for Business, Energy and Industrial Strategy (BEIS)(formerly the Department for Business Innovation and Skills (BIS)) and Her Majesty's Revenue and Customs (HMRC) to anticipate the impact of new legislation and respond to policy changes and emerging case law. We have also worked closely with Scottish Government officials to consider the administrative, legislative, and judicial processes for transferring certain reserved functions into the newly created Scottish Tribunal System (STS), and with policy colleagues in Scotland and Wales on a number of other policy matters. This section reports on some of the key areas of work taken forward with OGDs and devolved administrations in the last year.

**Objective 1: To strengthen arrangements with other departments and public bodies to oversee the development and delivery of administrative justice and tribunals policy.**

## Devolution

- 1.2 The UK and Scottish Governments have been working together to take forward recommendations made in the Smith Commission Report<sup>3</sup>. One of these recommendations was to devolve the reserved tribunals to Scotland to hear Scottish cases.
- 1.3 This will take effect through the process set down in section 39 of the Scotland Act 2016. Following the transfer of responsibility for managing reserved tribunals in Scotland, the Scottish Government will be responsible for deciding how those tribunals are managed in the future. The precise timing of that transfer has not yet been agreed by the UK Government and the Scottish Government.
- 1.4 Officials from the Scottish and UK Governments are working with the judiciary in Scotland, England and Wales to make sure that the process is implemented in a managed and structured way. Pending the transfer of responsibility for reserved tribunals, the UK Government will continue to be responsible for managing the operations of reserved tribunals until they are transferred to Scotland.

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<sup>3</sup> The Smith Commission Report and Command Paper can be found at [www.smith-commission.scot](http://www.smith-commission.scot)

### **Review of existing appeal rights in the Transport Tribunal**

While the majority of transport appeal rights were transferred from the existing Transport Tribunals into the First-tier Tribunal and Upper Tribunal in September 2009, the Transport Tribunal retained a small number of appeal rights relating to proposed Quality Contract Schemes (QCS) and bus timetabling in the UK. In January 2015, the MoJ transferred the QCS appeal right in England and Wales to the Administrative Appeals Chamber of the Upper Tribunal, where Judges and panel members already have the necessary expertise to hear QCS appeals. Transport is a devolved matter but there is no existing devolved tribunal in Scotland which can deal with these appeals. We have therefore retained the Transport Tribunal to hear these appeals until the new STS is ready to receive the appeal right. The Transport Tribunal will then be abolished.

## **Home Office**

- 1.5 As well as ongoing work to improve the end to end process for people challenging Home Office (HO) decisions, the MoJ has continued to work with the HO to introduce operational and procedural rules changes in response to two major pieces of primary legislation, the Immigration Act 2014 and the Immigration Act 2016, and litigation in 2015 related to the detained fast track.

### **Immigration Act 2014**

- 1.6 The Immigration Act 2014 reformed the immigration and asylum appeals process and reduced the number of appeal rights from seventeen to five, restricting them to circumstances where fundamental rights were claimed (namely human rights, protection (also known as asylum), revocation of refugee or humanitarian protection status, deprivation of citizenship, and European Economic Area free movement rights). It also made significant changes to immigration bail, introduced a new HO administrative review process to correct casework errors rather than someone having to appeal, introduced a new power for the Immigration Services Tribunal to suspend an immigration adviser's registration, and introduced out-of-country appeals for foreign national offenders.
- 1.7 The Act was implemented by the HO on a phased basis between July 2014 and April 2015 because of the scale of reform. It required a number of significant changes to the appeals procedures, and also to HMCTS processes including the IT system. Initially, the work was overseen by a joint HO and MoJ Steering Group, including HMCTS and senior judiciary. It was later implemented by a multi-agency board.
- 1.8 The MoJ, HMCTS, HO, and other partners where necessary, worked closely on modelling the likely volume of appeals and any potential displacement into the Upper Tribunal by way of judicial reviews, on scoping the procedural changes, and on agreeing the detail of new processes. For example, a new process was developed with the National Offender Management Service to enable European foreign national offenders deported from the UK to return temporarily in order to present their appeal in person at a tribunal hearing. This ensured compliance with European Economic Area Regulations.
- 1.9 Following the Act's Royal Assent, the Tribunal Procedure Committee (TPC), the independent body responsible for the making and oversight of rules in the First-tier

Tribunal and Upper Tribunal, took the opportunity to carry out a major review of the existing procedural rules, followed by a 12 week consultation. This was the conclusion of almost two years of work to rewrite and harmonise two separate sets of rules dating from 2005, aligning them (as far as appropriate) with the rules in place elsewhere in the UTS. Changes included introducing new powers, changing time limits, and making changes to the language and structure of the rules. The MoJ worked with the HO to ensure their operational processes complied with the new rule requirements, including establishing a working group to consider projects to deal with out-of-country appeals more efficiently (see 6.9). The new rules were introduced on the 20th of October 2014.

### **Detained Fast Track Rules**

- 1.10 Following a judicial review challenge, in June 2015 the High Court quashed the fast track rules (contained in the schedule to the Principal Rules) applying to appeals from certain detained asylum cases. The High Court's decision upheld by the Court of Appeal in July 2015. Subsequently all asylum appeals have been heard under the Principal Rules which, at the time of publishing this report, the TPC intend to review in 2017.
- 1.11 In October 2016, the Government launched a consultation on proposals to reintroduce a new fast track process to expedite Immigration and Asylum tribunal appeals brought by detained appellants. The consultation closed on 22 November 2016. The Government is currently considering respondents' views and will publish its response shortly.
- 1.12 The MoJ consultation on policy proposals to reintroduce a detained fast track process was intended to establish the best way of reducing the time appellants are detained while waiting for a decision on their immigration appeal, taking into careful account the comments of the court on the previous detained fast track process. The Government sought views on how this could be achieved whilst also guaranteeing access to a swift and just process for appellants.
- 1.13 The consultation included proposals for a significantly longer detained fast track process. Previously, under the 2014 rules, the detained fast track appeal process took 10 working days; the consultation proposed 25 working days from HO decision to receiving a decision in the first tier tribunal. The consultation also proposed introducing a case management review stage to help safeguard vulnerable appellants, which would allow the judge to remove individual cases from the expedited appeal process if they saw fit.
- 1.14 In the meantime, judicial guidance ensures that the listing of all asylum appeals where the appellant is detained continues to be prioritised and these appeals are being cleared in significantly shorter timescales than other immigration appeals in the First-tier Tribunal Immigration and Asylum Chamber (IAC).

### **Immigration Act 2016**

- 1.15 The Immigration Act 2016 made a number of changes to existing bail procedures including replacing the existing systems of bail sureties and, in Scotland, bail bonds, with a UK wide system of financial conditions. Changes will also allow the tribunal to transfer responsibility for varying future bail conditions originally set by the tribunal to the Secretary of State for the Home Department (SSHD). The Act also introduced a new obligation on the SSHD to refer all cases where a person has been subject to

immigration detention for more than four months to the First-tier Tribunal without independently applying for bail, and for this referral to be repeated at four monthly intervals, while they are detained.

### **Improving Performance in the Immigration and Asylum Chamber**

- 1.16 Over the last three years, clearance times in the Immigration & Asylum Chamber (IAC) have continued to lengthen. MoJ are working closely with the Home Office to support HMCTS and the judiciary to improve clearance times in both the First tier and Upper tribunal. This has involved operational changes, including increasing judicial capacity in the IAC, including reassigning judges from other chambers and recruiting more salaried judges. HMCTS have provided an additional 4,950 tribunal sitting days for this financial year to ensure current caseloads do not increase. Work is underway on a number of operational initiatives to reduce waiting times, including listing new asylum cases within five weeks, and clustering immigration detained cases in a small number of specialist hearing centres in the South East.
- 1.17 In addition, the judiciary are leading a project, with HMCTS, the Home Office and immigration stakeholders, including the Immigration Law Practitioners' Association, to develop a short form judgment template, which could potentially redirect judicial resource from writing extensive legal judgments to hearing more appeals in the First tier Tribunal.

### **The Department for Business, Energy and Industrial Strategy (BEIS)**

- 1.18 MoJ and HMCTS officials and members of the judiciary worked closely with the then Department for Business Innovation and Skills (BIS), now the Department for Business, Energy and Industrial Strategy (BEIS), on the employment sections in the Small Business, Enterprise and Employment Act 2015. The Act enables the Secretary of State to make regulations to place a limit on the number of times a party can postpone a case in an Employment Tribunal (ET) other than in exceptional circumstances, and oblige ETs to consider the use of cost orders where a case is postponed at short notice following a late application.
- 1.19 To improve the payment rate of ET awards, the Act introduced a new financial penalty for respondents failing to pay. The Act also allowed the Government to increase the maximum penalty imposed on employers who do not pay the Minimum Wage to 200% of arrears owed to workers (capped at £20k); and made exclusivity clauses unenforceable in zero hours contracts in May 2015. These provisions impact on ET procedures and extend the rights of employees. MoJ worked closely with HMCTS and BEIS to streamline processes and to provide users with sufficient information and signposting to be able to recover their awards.
- 1.20 BEIS and MoJ officials continue to work with Scottish Government officials to deliver the UK Government's commitment to the Smith Commission Agreement to transfer employment tribunal functions to Scotland.

### **Her Majesty's Revenue and Customs (HMRC)**

Policy changes in the Finance Bill 2014 relating to tax avoidance schemes were projected to increase the volume of tax cases by approximately 250% from January 2015 to March 2019. The peak of the receipts were expected to be from mid-2015 to late 2016. Whilst we have not seen the numbers that were forecast, there was a substantial increase in the later part of 2016. This increase is expected to continue. The benefit to the Exchequer of the new powers to accelerate payments from tax avoidance schemes was estimated at £5.5bn over a five year period and was a government priority. HMCTS and HMRC worked together to make sure the changes in the policy were implemented without any detriment to operational processes or service to users. Litigation capacity within both organisations was substantially increased to deal with the expected increase in litigation covering disputes arising from accelerated payments, and also to litigate substantive tax points as a result of challenging more avoidance schemes.

The Tax Expansion Project (TEP) in HMCTS was set up to co-ordinate and deliver all activities required to enable the Tax jurisdiction to manage the proposed increased workloads. Anticipated workload levels have been and will continue to be monitored to measure actual workload volumes against forecasts.

All First-tier Tribunal Tax administrative offices were centralised into a single office and a contact centre was set up in Loughborough in March 2015. Additional specialist judiciary and administrative staff were recruited, together with the delivery of an enhanced IT system and increased dedicated court capacity in London.

The focus for 2015/16 was to review and streamline processes combined with producing enhanced training for new starters employed to deal with the increased workload, which was successfully completed.

## User focus

**Objective 2: To establish, encourage and maintain a user focus that supports open policy making.**

### The Administrative Justice Forum (previously the Administrative Justice Advisory Group)

- 2.1 The Administrative Justice Advisory Group (AJAG) was established in May 2012 and became the Administrative Justice Forum (AJF) following the abolition of the Administrative Justice and Tribunals Council (AJTC) in August 2013. Since 2013 MoJ has worked with experts from across the administrative justice system to identify best practice and performance issues, primarily through the AJF, which has oversight across the administrative justice and tribunals system. The Forum has an independent chair, Jodi Berg OBE<sup>4</sup> and its membership includes representatives from the judiciary, academics, complaints handlers, ombudsmen, and organisations representing users of the system.
- 2.2 The AJF has held two formal Forum meetings a year since 2013. The agenda items have included:
- examining how feedback can be used to improve policy and operational processes, in particular how the use of summary reasons in the Social Security and Child Support (SSCS) Tribunal could improve initial decision making by DWP staff assessing benefit claims;
  - the Cabinet Office's government complaints portal, making it easier for people to complain about poor service in the public sector;
  - drafting a response to the Cabinet Office consultation on reform of the existing Ombudsman bodies;
  - working with the newly formed UK Administrative Justice Institute to identify research needs;
  - monitoring key tribunal trends, including the effects of mandatory reconsideration and other DWP reforms on SSCS Tribunal volumes and the implications of the Immigration Act reforms on volumes in the Immigration and Asylum Chamber;
  - reviewing UK-wide jurisdiction reform, including updates on progress in Northern Ireland, Scotland and Wales;
  - Treasury guidance on consolatory payments;

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<sup>4</sup> Jodi Berg OBE, is an expert in the field of dispute resolution, and has provided complaint review services for organisations including the Child Support Agency, JobCentre Plus and the Audit Commission. She is a solicitor and mediator and a Fellow of the Chartered Institute of Arbitrators.

- the Home Office review into the handling of complaints and MP's correspondence; and
- discussion with the Equalities and Human Rights Commission (EHRC) about equality and human rights in dispute resolution.

2.3 A summary of the minutes from the Forum's meetings can be found on the Gov.UK website at <https://www.gov.uk/government/groups/administrative-justice-advisory-group>

2.4 The AJF also hosted three 'roundtable' workshops looking at specific topics. The first, in 2014, focused on feedback mechanisms in the administrative justice system; the second, in 2015, focused on ensuring proportionality in resolving disputes; and the third, in 2016, focused on the user experience. These events were attended by representatives from across the system including academics, ombudsmen, judges and government officials and provided the opportunity for in-depth discussion. Further details of these workshops can be found later in this report.

## Non-HMCTS Tribunals and new appeal rights

- 3.1 The MoJ maintains oversight of those tribunals that remain outside the UTS and works to transfer tribunals into the UTS where appropriate to ensure that new appeal rights created by the Government's legislation are fair, efficient, and accessible.

**Objective 3: To prioritise tribunal transfers into the unified structure on a cost/benefit basis and to maintain oversight of those that remain outside of the system.**

- 3.2 In 2004 the Government invited Sir Andrew Leggatt, a former Lord Justice of Appeal, "to review the delivery of justice through tribunals" in England and Wales. The Leggatt Report recommended extensive reforms and set out a programme for developing a UTS.
- 3.3 The Tribunals, Courts and Enforcement Act 2007 gave effect to the Leggatt Report's recommendations. The Act established a two tier tribunal system, independent from decision-making government bodies, with a First-tier and an Upper Tribunal. A system of Chambers was established within the two-tier structure which enabled specialist tribunals with related jurisdictions to be brought together. This arrangement brings a number of benefits by providing cohesion and consistency within the system and allows for judges and panel members to be deployed across jurisdictions, as appropriate.
- 3.4 In the first year of the strategic work programme, the MoJ prioritised reviews of the five major tribunals outside of the UTS. Since then, the focus has been on maintaining strategic oversight, including contributing to the government-wide independent triennial review of the Valuation Tribunal England.

## The Police Disciplinary Appeals Tribunals

- 3.5 Police Disciplinary Appeals Tribunals hear appeals against the findings of internal disciplinary proceedings brought against police officers and special constables. Appeal hearings are convened by the relevant police force and take place locally. In 2014, Major-General (Retired) Chip Chapman conducted an independent review of the police disciplinary system for England and Wales. The terms of the review included putting forward proposals for a reformed police disciplinary system that would be clearer, public-focused, transparent and more independent.
- 3.6 Policy officials from the MoJ met with Major-General Chapman and discussed the Home Office's (HO) options for revising the Police Discipline Appeals Tribunal, drawing on their knowledge of the UTS. Discussions included the make-up of tribunal panels to ensure appropriate expertise and independence, the recruitment processes for chairs and panel members and the arrangements for reviewing procedural rules. Major-General Chapman's report, 'An Independent Review of the

Police Disciplinary System in England and Wales<sup>5</sup> (October 2014) made a number of recommendations including that the third panel member should be a lay person, and proposed more centralised hearings.

- 3.7 Following a public consultation ‘Improving Police Integrity,’<sup>6</sup> which ran for eight weeks from 11 December 2014, the Home Secretary made a written statement on 12 March 2015<sup>7</sup> confirming that the police disciplinary system would be reformed to ensure the highest standards of integrity in the police. Regulations laid in March 2015 implemented some changes to the wider police disciplinary system. The changes included police disciplinary hearings and appeals being held in public to ensure that the robust response the police take to misconduct is visible and open, and that hearing panels are led by legally-qualified chairs.
- 3.8 The Policing and Crime Act 2017, which received Royal Assent on 31 January 2017, builds on the reforms to Police Discipline Appeals Tribunals. Changes include replacing retired police officers with laypersons on the hearing panel and introducing greater flexibility by enabling forces to collaborate on the administration of hearings. These changes will take effect in due course following the necessary changes to secondary legislation.

### Valuation Tribunal England (VTE)

- 3.9 VTE is an arm’s length body of the DCLG which determines appeals relating to business rates and council tax valuation, and the Valuation Tribunal Service (VTS) is the administrative body which supports it. The VTE was identified for transfer into the Property Chamber in the First-tier Tribunal when it was established in 2013 and the VTS was listed for abolition in the Public Bodies Act 2011. However, after consideration of the scope for such a transfer, Ministers concluded that the transfer should not proceed and that, instead, both bodies should be subject to a Triennial Review, as set out in Cabinet Office guidelines.
- 3.10 DCLG has carried out an independent triennial review of the VTE and the VTS, and has sought contributions from MoJ, drawing on our knowledge both of the wider administrative justice system and of VTE, following a light touch audit of the organisation which we carried out in December 2013. The VTE has a very different judicial structure to the tribunals in the First-tier and provides an interesting example of an alternative judicial structure. Instead of paid judges and expert members, cases in the VTE are heard by panels of unpaid lay members, advised on rating and council tax practice and procedure by administrative clerks, under the oversight of the part time salaried President and three fee paid Vice Presidents.
- 3.11 The triennial review team was interested in wider MoJ policy proposals on the greater use of technology to speed up cases, and more use of online and remote technology to determine disputes. The review board will publish its recommendations later this year.

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<sup>5</sup> <https://www.gov.uk/government/publications/the-police-disciplinary-system-in-england-and-wales>

<sup>6</sup> <https://www.gov.uk/government/consultations/improving-police-integrity-reforming-the-police-complaints-and-disciplinary-systems>

<sup>7</sup> <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150312/wmstext/150312m0001.htm#15031225000012>

## Social Care Appeals Process

- 3.12 The Care Act 2014 brought together a number of existing laws and placed new duties on local authorities to ensure that wellbeing, dignity and choice are at the heart of the social care system. The Act committed the Department of Health (DH) to develop an independent appeal system for adult social care, to promote an earlier and quicker resolution process between the applicant and the relevant local authority for disputes relating to social care provision.
- 3.13 Provisions in Part 2 of the Act include a facility to introduce a cap on the amount an individual would have to spend on the cost of social care – the local authority would assess care needs and carry out a means test to calculate how much an individual would have to pay. Disputes about certain key decisions which local authorities must make under Part 1 of the Care Act, including disputes about the amount of a person's personal budget or independent personal budget, could be appealed. MoJ officials attended a number of workshops during 2014, along with other stakeholders and practitioners, to consider the design element of an appeals process which included an independent element for social care. The key areas of discussion included defining the scope of the appeals system, determining timescales for lodging appeals, and what information to include in guidance.
- 3.14 The Government intended the cap and the appeals policy means testing provisions to be brought into force in 2016 but as a number of concerns were raised by stakeholders in July 2015 the Government announced that their introduction would be delayed until 2020. MoJ will continue to work with DH to consider policy questions and, in due course, with HMCTS, to make sure arrangements are in place to implement the provisions when they come into force.

## Groceries Code Adjudicator (GCA)

- 3.15 The Groceries Code Adjudicator (GCA) oversees the relationship between supermarkets and their suppliers. It ensures that large supermarkets treat their direct suppliers lawfully and fairly, investigates complaints, and arbitrates in disputes. In April 2014 MoJ officials met GCA staff to assess the GCA business model, identify areas of interest and share best practice. GCA staff summarised the process in relation to identifying and reporting issues and disputes under the Groceries Supply Code of Practice, including the escalation process, timing, and routes into the investigations and arbitration procedures set out in the Groceries Code Adjudicator Act 2013. The visit was useful for MoJ officials to compare the arbitration work carried out by the GCA to the use of existing judicial mediation and alternative dispute resolution procedures available in parts of the UTS and ETs.

**Objective 4: To ensure new appeal rights proposed by government are fair, efficient and accessible.**

- 4.1 There are a number of ways that proposals for new appeal rights emerge, (sometimes arising from a government or Law Commission review or proposals in a private members bill) but the majority arise from OGDs' policy making, which will determine how a decision relating to a right or benefit is to be determined by the state. This in turn requires recourse to an independent review of that decision. While primary legislation will determine the scope of the decision and sometimes the

scope of the appeal, MoJ officials (on behalf of the Lord Chancellor) work closely with the Chamber Presidents, the office of the Senior President of Tribunals (SPT)<sup>8</sup> and HMCTS to determine in which chamber within the UTS the appeal right is heard.

- 4.2 The TPC considers any implications of new appeal rights for the jurisdiction's procedural rules. For example, it may have to draft a rule giving the tribunal power to make a site visit, or limiting the scope or notice of any such visit.
- 4.3 The TPC may also feed into an OGD's consultation paper on proposed policy changes or regulation amendments. The TPC always carries out its own consultation on significant rule changes.
- 4.4 The MoJ policy team works with OGDs to consider what alternatives there may be for resolving disputes before they reach the tribunal, encouraging officials to consider other policy levers that may be available, drawing on examples from across the administrative justice system. This can include funding specialist advice to the parties, encouraging (or mandating) that they consider mediation or other alternative dispute resolution, and reviewing available guidance or signposting to help people choose the best redress mechanism for their dispute.
- 4.5 Over 40 new appeal rights transferred into the UTS during the period covered by this report. These included new appeal rights concerning food authenticity, such as the Honey (England) Regulations 2015 and the Country of Origin of Certain Meats (England) Regulations 2015, and appeal rights relating to copyright law, such as the Copyright and Rights in Performances (Licensing of Orphan Works) Regulations 2014.<sup>9</sup>

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<sup>8</sup> From 25 June 2012 until 17 September 2015 the SPT was Sir Jeremy Sullivan. Sir Ernest Ryder became SPT on 18 September 2105.

<sup>9</sup> Orphan works are creative works or performances that are subject to copyright – like a diary, photograph, film or piece of music – for which the copyright holders are either unknown or cannot be found.

### **The Electronic Communications Code**

The Electronic Communications Code is the statutory regime set out in Schedule 2 to the Telecommunications Act 1984, which governs the rights of network operators to build and maintain digital communications infrastructure on public and private land.

The Digital Economy Bill, 2016–17, sponsored by the Department for Culture, Media and Sport (DCMS), introduces a new Electronic Communications Code to replace the existing code and progresses their policy proposal to transfer the current appeal route for Electronic Communications Code disputes from the County Courts to the Lands Chamber of the Upper Tribunal. This work supports the continuing project to reform the Electronic Communications Code following the Law Commission's review of the Electronic Communications Code between 2011 and 2013.

MoJ has worked closely with the TPC to progress proposed rule amendments to the Upper Tribunal (Lands Chamber) Procedure Rules to improve the dispute resolution process for these cases. This has included a proposed rule amendment to provide new powers to the Tribunal to make cost orders to ensure the default position of costs following the event is replicated when Electronic Communications Code cases are transferred from the County Courts to the Tribunal. The Digital Economy Bill is expected to receive Royal Assent in spring 2017.

### **Civil Sanctions and Penalties**

- 4.6 Part 3 of the Regulatory Enforcement and Sanctions Act 2008 provides regulators with an extended tool kit of alternative civil sanctions as a more proportionate and flexible response to cases of regulatory non-compliance normally dealt with in the criminal courts. In particular, the extended toolkit allows regulators to remove the financial benefit gained by businesses that deliberately seek an advantage through non-compliance with their regulatory obligations, while helping to secure increased compliance.
- 4.7 The civil sanctions which regulators may impose as alternatives to criminal sanctions are fixed monetary penalties, discretionary requirements (such as variable monetary penalties and non-monetary requirements), stop notices, and enforcement undertakings.
- 4.8 The Act contains a number of safeguards, one of which is a right of appeal, designed to ensure that the new powers, are used fairly and properly by regulators. Consequently we have seen a growing interest in the use of civil regulatory sanctions by government departments, national regulators, and local authorities – in particular the use of immediate fines for regulatory enforcement as a more proportionate and flexible response to non-compliance normally dealt with by the criminal courts. For example, the Housing and Planning Act 2016 contains powers for local housing authorities to use civil sanctions in lieu of prosecutions in a bid to clamp down on rogue landlords. It is intended that any appeals against the sanctions will be made to the First-tier Tribunal Property Chamber.
- 4.9 These have been developed for a range of offences, including failure to register to vote, the Emissions Performance Standard concerning fossil fuels, the Honey Regulations, and the Country of Origin Meat Regulations. More recently DEFRA is planning to consult on banning the use of microbeads in cosmetics and personal

care products and we have worked with them to include proposals on the location of the appeal and the use of civil penalties.

## **The Housing and Planning Act 2016**

- 4.10 Government housing policy aims to promote house building and home ownership and protect vulnerable tenants from exploitation by rogue landlords. The Housing and Planning Act 2016 translates these aims into primary legislation which, amongst other measures, broadens Local Authority powers to regulate social and private rented housing. The Act received Royal Assent on 12 May 2016 and is sponsored by DCLG.
- 4.11 Under the Act the Local Authority can apply to the Property Chamber of the First Tier Tribunal for a Banning Order to prevent a named person or company who has been convicted of specified offences from engaging in letting housing or running a letting agency. The Order is appealable to the Lands Chamber of the Upper Tribunal. A breach of the Banning Order can be dealt with either by prosecution or a civil penalty and is appealable. The Act specifies that Local Authorities must keep a database including any person or company subject to a Banning Order. They will also have the discretion to include anyone convicted of a specified Banning Order offence. There is a right of appeal against inclusion, to the First Tier Tribunal.
- 4.12 The Act also extends the basis on which local authorities can apply to the First Tier Tribunal for a Rent Repayment Order against a landlord. The landlord can appeal against the Order in the Upper Tribunal.
- 4.13 DCLG is drafting the secondary legislation required to support the introduction of the new enforcement powers for local authorities. MoJ is consulting the TPC to establish whether any amendments will be required to the present Property Chamber and Lands Chamber Rules to accommodate this new casework.

## **Gateway guidance**

- 4.14 The 'gateway' guidance, produced by the MoJ policy team, contains the information needed for policy makers from OGDs and other organisations who are considering whether the UTS would be the appropriate place for a new appeal right. The purpose of the guidance is to clarify the process of setting up a new appeal right, identify the roles and responsibilities of the MoJ and the OGD or organisation sponsoring the new appeal right, and to raise awareness of the impact of a policy proposal on the wider administrative justice system.
- 4.15 The guidance was reviewed and developed in 2014 and is now firmly established. Feedback on it has been very positive. OGDs have commented that it has helped to clarify the process, and the work and input required to introduce a new appeal right.

## Funding of Tribunals

- 5.1 Tribunals are, in the main, a forum for the public to challenge decisions made by the state and it is essential that they remain independent of those initial decision makers. In the current financial climate, it is also crucial that the MoJ assesses whether the current fees and funding arrangements provide the best means of achieving value for money for the taxpayer and incentivise the appropriate and proportionate use of tribunals.

**Objective 5: To scope, develop and implement clear, evidence based tribunal funding and fee models to reduce demands on the tribunal system.**

### The wider financial context

- 5.2 The importance of courts and tribunals is self-evident. It is essential that they are properly funded so that access to justice is protected and the rule of law upheld.
- 5.3 In the spending review 2015, the Government announced on 25 November 2015 that we would be investing around £1 billion over the next five years in modernising and reforming the courts and tribunals to improve the service to users.

### Tribunal funding

- 5.4 Ministers believe that it is right in principle that those who use the tribunals, and can afford to do so, should contribute towards the costs of the service through fees. We believe that it is right to shift the burden from taxpayers to users, who are those who benefit most from the proceedings. The charging of fees also introduces a financial discipline into proceedings which encourages those bringing proceedings to weigh carefully the relative costs and risks of litigation, and to consider alternative ways of resolving their disputes.
- 5.5 During the period covered by this report, we have pursued the introduction of fees, and increases to existing fees, across a range of Tribunals in a number of areas, primarily fees for immigration and asylum appeals, but also in relation to a number of other chambers, including the Property, Tax, and General Regulatory Chambers. Further details are set out below.
- 5.6 For those jurisdictions in which a fee is charged there is a system of fee remissions available, under which those who qualify may have their fees reduced or waived altogether based on an assessment of their financial means. The scheme applies to fees charged in all tribunals, except for proceedings in the Immigration and Asylum Chamber. In October 2015, the remissions scheme was relaunched as “Help with Fees” with improved signposting to guidance and simplified procedures designed to raise awareness of the scheme and make it simpler and more straightforward to apply. The scheme was further improved in July 2016 when an online application system was introduced, making it easier and quicker to apply, and reducing staff time taken to process forms.

- 5.7 On 31 January 2017, the Government launched a consultation, following completion of the review of Employment Tribunal fees, proposing to extend the support available under the Help with Fees scheme (see paragraph 5.22 below for further details).

## **Immigration and Asylum Chamber**

- 5.8 In September 2016, following a consultation, the Government announced its decision to increase fees for appeals in the First-tier Tribunal to full cost levels and introduce new fees for appeals to the Upper Tribunal, and for applications for permission to appeal in both the First-tier and Upper Tribunals, also designed to achieve full cost recovery.
- 5.9 In October 2016, the fee increases in the First-tier Tribunal were implemented and at the same time we also widened the scope of fee remissions and waivers available to people bringing appeals before the Tribunal, including a fee waiver for those in receipt of a Home Office destitution waiver.
- 5.10 However, on 25 November 2016, the Government announced that it had decided to suspend those fee increases pending a review. We made clear in the announcement that we continue to believe that the principle of charging fees is right, and that the fee increases were affordable, taking into account the fee remissions, exemptions and waivers available. Nevertheless, having listened to the representations that we received on the higher fees, we decided that it was the right time to take stock and review them, in order to balance the interests of all tribunal users and the taxpayer, and to look at those fees again alongside other tribunal fees and in the wider context of funding for the system overall.
- 5.11 At the same time, we also announced that we would reconsider our plans to introduce fees in the Upper Tribunal, which we also announced in September 2016 as part of the wider review of Tribunal funding. We have decided, however, to retain the extended system of fee waivers and remissions.
- 5.12 The effect of this decision was that the fees to appeal an immigration and nationality decision in the First-tier Tribunal reverted to the lower fees which applied prior to those increases, and anyone who paid the higher fee has been offered a refund of the difference.

## **Property Chamber**

- 5.13 The First-tier (Property Chamber) Fees (Amendment) Order 2014 came into force in July 2014 and provided for fees to be collected for certain applications introduced as a result of the Mobile Homes Act 2013. It also simplified the existing fees charged for mobile homes applications.
- 5.14 The fees, which came into force through this Order, are for appeals against licensing decisions made by local authorities under the Caravan Sites and Control of Development Act 1960. The fees were set at the same level (£155) as existing fees for applications which followed similar tribunal processes.

- 5.15 On 25 July 2016, the Civil Proceedings, First-tier Tribunal, Upper Tribunal and Employment Tribunals Fees (Amendment) Order 2016 came into effect which, among other things, introduced a new fee structure for proceedings in the Property Chamber. Specifically it introduced: a standard issue of £100 for most proceedings and a hearing fee of £200.

## **Lands Chamber**

- 5.16 Fees for proceedings in the Lands Chamber are set out in the Upper Tribunal (Lands Chamber) Fees Order 2009 as amended. In April 2016, the fees for these proceedings were increased by 10% by the Court of Appeal and Upper Tribunal (Lands Chamber) Fees (Amendment) Order 2016.

## **Employment Tribunals (ETs) and Employment Appeals Tribunal (EAT)**

- 5.17 Fees were introduced in ETs and the EAT on 29 July 2013. The principal objectives for introducing fees were:

- to transfer a proportion of the costs of the tribunals to those who use them, where they can afford to pay; and
- to encourage parties to use other methods of dispute resolution.

- 5.18 Although not a formal objective, we also considered that the introduction of fees might help to promote the efficient and effective use of the tribunals.

- 5.19 Another relevant reform during the period was the introduction of mandatory conciliation by the Advisory, Conciliation and Arbitration Service (Acas). Since April 2014, with a small number of exceptions, anyone considering submitting an ET claim must first notify Acas of their intention to do so. Acas then offers optional and free conciliation in an attempt to resolve the dispute without the cost and stress of attending the tribunal. The scheme has been very successful: over 80,000 notifications were received by Acas in the first year of operation and over 90,000 in the second year. During calendar year 2014, 15% of cases referred to Acas resulted in a formal settlement and a further 63% did not proceed to a tribunal claim, with only 22% making a tribunal claim. In calendar year 2015 these figures improved to 16%, 65%, and 19% respectively. Where a case does go to an ET, Acas conciliation is still available up to the day of the hearing if necessary, and results in the settlement or withdrawal of over 70% of valid tribunal claims. The free, independent, and confidential service provided by Acas means that disputes are resolved more quickly, with less expense and stress for the parties and in a more proportionate way.

- 5.20 During 2013 and 2014, Unison brought two legal challenges to the Employment Tribunals and Employment Appeals Tribunal Fees Order 2013 (the Order). Both challenges were dismissed on all grounds. Unison launched appeals against both decisions to the Court of Appeal, which were heard in July 2015. In August 2015, both appeals were dismissed by the Court of Appeal. Unison has been granted leave to appeal to the Supreme Court.

- 5.21 The Government review of the introduction of ET fees was completed and published on 31 January 2017. It found that the principal objectives for ET fees had broadly

been met; and that the current scheme was generally working effectively and was operating lawfully.

- 5.22 However, it also identified areas where there was room for improvement. In particular, the fall in ET claims and the evidence that some people have found the fees off-putting, persuaded us that some action was necessary. On 31 January 2017 we also launched a consultation seeking views on proposals to extend the support available to people under the Help with Fees scheme. Under our proposals, the gross monthly income threshold for a full remission would be increased from £1,085 to £1,250, broadly the level of the National Living Wage.
- 5.23 Under these proposals, more people would qualify for a full remission and others would contribute. We believe that this is the most effective and fairest way of addressing the issues we have identified because they target people on low incomes who are we believe those most likely to find fees off-putting.
- 5.24 Although these proposals have been developed to address concerns about the impact of fees in the ETs, HMCTS operates a standard scheme across all of its fee charging jurisdictions, with the exception of the First-tier Tribunal (Immigration and Asylum chamber) where a separate fee remissions, exemptions and waivers policy applies. These proposals would also benefit those bringing proceedings in the civil and family courts and the tribunals in which Help with Fees applies.

### **Planned fee increases**

- 5.25 In December 2015, following a consultation exercise, the Government announced the intention to introduce fees for proceedings in the Tax Chamber (First-tier and Upper Tribunals) and the General Regulatory Chamber.
- 5.26 The consultation paper and the Government Response can be found on the Justice website at: <https://consult.justice.gov.uk/digital-communications/further-fees-proposal-consultation>.
- 5.27 These increases have been put on hold pending the outcome of the review of tribunal fees and funding (see paragraph 5.11 above).

## Improving initial decision making

### Mapping Tribunal Data

- 6.1 Tribunal data can provide important insights into the policy, practice, and performance of government departments. For example, the number of appeals which are successful at tribunal can be an indicator of how well initial decision making processes are working. The MoJ has made a commitment to work with OGDs to establish end-to-end data sharing arrangements, to help departments understand the kinds of decisions that are being overturned by tribunals, and to identify opportunities to resolve these disputes earlier in the decision making processes.

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

- 6.2 MoJ Analytical Services Directorate already publishes a quarterly performance report for all courts and tribunals, at [www.gov.uk/government/collections/tribunals-statistics](http://www.gov.uk/government/collections/tribunals-statistics), which provides an initial profile of how effectively a tribunal is working. The data includes numbers of appeals received, the total time to be determined and the number of appeals disposed of. However, both policy makers and operational staff in the MoJ and OGDs frequently need greater detail on the end to end process to identify areas for improvement. HMCTS already works closely with OGDs on its two largest tribunals, Immigration and Asylum and Social Security and Child Support (SSCS), so it can ensure sufficient operational and judicial resource is available and identify potential for improving efficiency. Where a tribunal is working well, there is limited benefit in further developing new end-to-end data sharing. Instead we have prioritised those tribunals where there is an identifiable problem, such as an unexplained increase in volumes in the mental health tribunal or where a government department is assessing the effectiveness of a new policy.

### Data Sharing with Other Departments

- 6.3 As the SSCS tribunal receives the highest numbers of appeals, and as the benefit system is in the process of being reformed, the MoJ has agreed to collect and share information about case volumes and outcomes as part of a new data sharing arrangement with DWP. The information will initially relate to Employment Support Allowance (ESA) cases. By establishing data-sharing arrangements at an early stage in the design of the process, when the end to end process is still relatively new, we will be able to review and make changes to data collection systems as volumes increase. The MoJ and DWP will continue to work closely over the next year to develop systems and processes for sharing data relating to ESA and later for Universal Credit.

## Immigration and Asylum Chamber

- 6.4 Officials from both the HO and HMCTS are members of the Appeals Steering Group which provides strategic oversight to the interactions between the MoJ and HO and has a standing agenda item on performance. Where an issue is identified, for example the time it takes to deal with appeals from Foreign National Offenders (FNOs), the Group commissions further research and proposals to improve performance.
- 6.5 In the case of FNOs, this has included the setting up of a joint FNO ‘dashboard’ to present data to the steering group, a reduction in the number of adjournment codes to improve data analysis and an end to end mapping exercise to identify the scope for process changes to improve performance.
- 6.6 The group will also review how certain types of work can be moved to other centres to alleviate pressure on centres with a high concentration of FNO cases. Two joint continuous improvement workshops facilitated by MoJ have been held to focus on reducing the number of adjournments caused by the HO or the tribunal.
- 6.7 While some of this work is ongoing, processes are now in place to relist adjourned cases within 28 days. A joint plan with HO and TASCOR (a private firm which provides security for the tribunal) to improve the attendance of FNOs at hearings is now in place and additional secure courts have been identified and used in the London area where the pressure is most pronounced.

## Out-of-country appeals

- 6.8 As part of its work to introduce new procedure rules for the Immigration and Asylum Chamber, the TPC worked to revise the time limit for responding to appeals brought from outside the UK. The TPC originally proposed that a response must be received by the tribunal within 28 days. The HO was concerned that this time limit was unachievable because transit time was beyond its control, the process being made longer by safeguards in a diplomatic bag process designed to ensure that documents are transferred securely. To inform the rule change the MoJ worked with the HO and HMCTS to map the out-of-country appeals process, to identify where efficiencies could be made, and to collect data on the time it takes to transfer papers.
- 6.9 This work demonstrated that while the HO was considering the appeal, reviewing the decision, producing a response and dispatching it within 28 days, documents were often then delayed in transit by as much as six weeks due to factors such as customs clearance. On the basis of these findings, the TPC agreed to produce a rule requiring that the HO response be sent to – but not necessarily received by – the tribunal within 28 days. This rule discounts the time documents are in transit, but sets a time limit for the HO to respond. Since the rule was introduced (October 2014), the HO and HMCTS have continued to work together to find alternative methods to transfer documents securely and quickly to the tribunal. For example, since September 2015 the HO administration of these appeals has been dealt with from within the UK, thereby removing the need for a diplomatic bag. We will continue to monitor response times and report back to the TPC, who have committed to a wider review of how the Principal Rules are working and considering any further amendments that may be necessary.

## **Immigration Act 2016**

- 6.10 Powers in the Immigration Act 2016 allow the Home Office to certify and remove more appellants, requiring them to appeal from outside the UK. The Home Office commenced these provisions in December 2016, and it will be some time before we can assess how the new process is working. As previously mentioned, a major element of our ‘Transforming Our Justice System’ programme is to improve processes and access to our justice system, for all users, wherever they are located. Our investment in new technology such as video conferencing and online dispute resolution, will benefit all appellants, including those appealing from outside the UK.

## Information

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

### AJF Workshop on Feedback

- 7.1 Following the first the AJF workshop on feedback in May 2014, the AJF has continued to promote the importance of collecting, analysing and feeding back data to improve services.
- 7.2 A particular example identified by the workshop was the DWP summary reasons pilot, where judges had provided additional information alongside their decisions to enable the DWP to understand and improve its decision making (see paragraph 7.6 for more detail on this work).
- 7.3 The workshop concluded that more should be done at the most senior levels of government and the Civil Service to enable frontline services to respond proactively to feedback and to implement the necessary service improvements. This would, in turn, reduce the need for recourse to complaints and appeal mechanisms.
- 7.4 This is an area of particular interest to the AJF and the MoJ. Attendees at the roundtable stressed that the effective use of feedback was dependent on a culture where constructive feedback is welcomed. The workshop highlighted the strong link to the Cabinet Office's ongoing research on how to use feedback to improve public services, in particular how to make it easier for people to complain about public services, and for this complaints data to be used to identify and address issues in public service delivery.
- 7.5 The cross government complaints forum brings together complaints managers from across Government and is coordinated by DWP. Its current chair, Edward Troup, Permanent Secretary / Executive Chair of HMRC, is now also the Government's senior Complaints Champion. The MoJ is a key member of the complaints forum, and in May 2016 officials presented the AJF's recommendations about complaints and feedback. We will continue to work with the complaints forum in developing good practice and using complaints, customer feedback and other data sources available to departments to improve our services. As part of this work, Jodi Berg was invited to attend the Government's Senior Leadership Conference on using complaints to improve public services to share her expertise with senior departmental leads on complaints, at the invitation of Edward Troup.

## Summary reasons and decision making within DWP

- 7.6 The SSCS jurisdiction of the Social Entitlement Chamber of the First tier Tribunal began giving 'summary reasons' for all Employment Support Allowance and Personal Independent Payment cases in March 2014. These are a short explanation of why the tribunal panel overturned or upheld a decision, which is provided to the appellant and the DWP.
- 7.7 DWP has confirmed that the summary reasons feedback has contributed significantly to broadening their understanding of why their decisions are upheld or overturned. The handling of disputed decisions has been centralised into Dispute Resolution Teams.
- 7.8 DWP have also held a number of case review sessions with groups of decision-makers and used tribunal feedback to support continuous learning, so that DWP staff understand why their decisions are upheld or overturned, and the feedback is included in training and guidance. For example, decision makers are now encouraged to use additional sources of medical evidence in considering their initial decisions having seen the importance the tribunal attaches to this evidence.
- 7.9 The feedback has also highlighted areas for further improvement. For example, DWP have provided further training and a more claimant-friendly script to Employment Support Allowance decision-makers in making and documenting calls to the claimant to explain the decision and evidence relied upon, and invite any further relevant evidence. DWP have focused on improving the quality of how staff assess evidence and ensuring that appeal responses deal comprehensively and effectively with all the points in dispute.
- 7.10 DWP has a robust Quality Assurance Framework (QAF) across its benefits casework, with Quality Assurance Managers not only checking decisions but also acting in a preventative role, helping to ensure that errors do not creep into decision making. In this way, quality is not only maintained but improved, as decision makers effectively learn on the job. The QAF is being reviewed to make it an even more effective quality assurance tool.

## Dispute resolution

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

### AJF proportionality workshop

- 8.1 The AJF's second stakeholder event was held in June 2015 and concentrated on proportionality – that is, ensuring that disputes are resolved quickly, effectively, and by the most relevant and appropriate means. A range of distinguished speakers presented at the event, including the SPT, the Parliamentary and Health Service Ombudsman, Dame Julie Mellor DBE, and Sir Richard Susskind, IT Advisor to the Lord Chief Justice. The event was attended by representatives from across the administrative justice system, including senior judiciary, ombudsmen, academics, government, and advice organisations, who brought a wide breadth of experience to the discussion.
- 8.2 The key discussion points included:
- **user experience:** attendees at the event considered a more proportionate system must be designed around user needs and experiences. An understanding of how individuals navigate and experience the administrative justice system was felt to be the key to developing effective reforms.
  - **better collaboration between administrative justice bodies:** disputes are often complex, and may need to be resolved by more than one organisation. Voluntary arrangements between different organisations could be established to support and signpost users and avoid duplication of work.
  - **the potential for use of online services:** online services may be a simpler and more convenient way of dealing with the majority of disputes. Digital services could be used to gather relevant information about cases, and to help users navigate their way through the administrative justice system.
- 8.3 The outcomes from the event have been fed into the development of the Government's Transforming our Justice System reform programme which was announced on 15 September 2016 (see paragraph 11.1).

### Special Educational Needs and Disability (SEND) Tribunal

- 8.4 Reforms under the Children and Families Act 2014 introduced Education, Health and Care (EHC) plans which set out the special educational needs of children and young people, and the provision required to meet them, across education, health, and social care. The new system gives parents, children and young people more opportunity to be informed about and involved in decisions relating to those areas. While the new system has been designed to help families, local authorities and health bodies to reach agreement earlier and more easily because of the person-centred approach, there may still be times when parents and young people disagree

with local authorities' and/or clinical commissioning groups' decisions about education, health or social care issues.

- 8.5 Appeals to the SEND Tribunal, part of the Health, Education and Social Care Chamber of the First tier Tribunal, can only be made about the educational content of EHC plans. However, the Department for Education (DfE) and the MoJ ran a pilot programme to trial the use of new powers through which the SEND Tribunal can make non-binding recommendations about health and social care aspects of EHC plans.
- 8.6 Thirteen authorities agreed to participate in the pilot, which began in June 2015, with a further four local authorities joining in 2016. The pilot, which ended on 31 August 2016, is part of a wider review of dispute resolution in the SEND system, and evidence has been collected through interviews with stakeholders, including parents, young people, judges, local authorities and the people who represent appellants at tribunal. Ministers are required by the Children and Families Act 2014 to report on the Review to Parliament by 31 March 2017, and are currently considering the evidence from the pilot.

### **Competition Markets Authority (CMA)**

- 8.7 The CMA is an independent arms-length body whose remit is to promote competition for the benefit of consumers, both within and outside the UK, and to make markets work well for consumers, businesses and the economy. In December 2014 it published a market study<sup>10</sup> looking at the supply of residential property management services by property management companies which considered how effectively the market is working in this area. The report included recommendations on dispute resolution for the DCLG (who lead on housing policy) and the MoJ to consider jointly.
- 8.8 Overall the CMA concluded that the Leasehold Valuation jurisdiction (which is part of the Residential Property Jurisdiction in the Property Chamber of the First tier Tribunal) was working well. The report, however, raised concerns that some disputes which came to the tribunal could have been resolved at an earlier stage and recommended that the MoJ and DCLG consider providing access to free mediation between the parties before the appellant has lodged their case with the tribunal and paid a fee. Alternatively, it recommended the introduction of an early neutral evaluation scheme, where an independent expert advises the parties on the strength of their case and likelihood of success.
- 8.9 The residential property jurisdiction is unusual in that it has an existing mediation scheme provided by its salaried judges. The scheme was introduced by the Chamber President and is a small scale initiative. Although the tribunal does not charge for judicial mediation itself, one party will have already paid a fee for lodging their appeal.

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<sup>10</sup> Market studies are examinations into the causes of why particular markets may not be working well, taking an overview of regulatory and other economic drivers and patterns of consumer and business behaviour.

- 8.10 We will continue to work with DCLG to consider how to adapt the current information on the Justice website, which includes links to organisations who offer free mediation for those who cannot afford to pay. The CMA report highlights the complexity of the redress mechanisms within the leasehold sector, including courts, tribunals, the Housing Ombudsman, and the enforcement of management standards through membership organisations. LEASE<sup>11</sup>, working with DCLG and MoJ, subsequently produced a map of the different options available to help users identify the most appropriate route to seek redress, which is available on the LEASE website.
- 8.11 Following the publication of the CMA report, the MOJ worked with the CMA, DCLG and LEASE to develop an Early Neutral Evaluation service for subscribing members of the National Leasehold Group (NLG). LEASE's offer for NLG consists of a former First-tier Tribunal (Property Chamber) judge expressing a view on the merits of the issues raised by the NLG member and their leaseholder. The view offered is not binding, but is an unbiased evaluation of the relative strengths of the parties' cases, and guidance as to the possible outcome if the matter proceeds to the tribunal. The service is wholly online, and at no cost to the leaseholder. The evaluation is to serve as a springboard to further negotiations; thus helping to avoid the time, expense and anxiety caused by unnecessary litigation.

#### **HM Revenue & Customs (HMRC) – Alternative dispute resolution**

HMRC makes millions of appealable tax decisions a year. Around 12,000 disputes a year go to the tax tribunal. In 2011, it piloted alternative dispute resolution (ADR) to resolve certain kinds of disputes, primarily with business customers, and moved it into business as usual in late 2013. Among other things, ADR is used when there is a dispute about the facts of a case, when HMRC does not agree with the evidence which has been submitted and requests other evidence, or when individuals feel that HMRC has made the wrong assumptions about a case.

Individuals and organisations can apply online for ADR (the largest customers apply through HMRC's dedicated Customer Relationship Managers). Cases are then assessed to see if they are suitable. HMRC mediators or facilitators are normally appointed to work on cases alone but other models include joint mediation with professional advisors and independent mediation. Mediation usually takes place over a day, with a face-to-face meeting between the HMRC case officer, the individual challenging the decision, and a trained mediator. If a solution is agreed, an exit document setting out what was agreed by both parties is produced. This reduces the risk of further disagreements between parties over what was actually agreed at the mediation session. Where an HMRC mediator is used, there are no charges from HMRC for this service.

Around 90% of cases which go through HMRC's ADR process are either fully or partially resolved. This approach has the benefit of being cheaper and less adversarial than litigation, with facilitators and mediators helping to focus the conversation on areas which need to be resolved, and supporting constructive discussion between the two parties.

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<sup>11</sup> LEASE is an advisory service which provides free initial advice to members of the public on residential long leasehold law.

## Maintaining a user focus

**Objective 9: To develop improved information on and insight into administrative justice users to inform work on each strand of the strategy.**

- 9.1 The MoJ recognises the importance of providing sufficient information to tribunal users to enable them to navigate the administrative justice system effectively and enable them to identify the most appropriate body to help resolve their dispute. The AJF also recognised this was a priority and established a subgroup to consider how to improve sign-posting, in particular through the development of the GOV.UK website and improvements to guidance in the Property Chamber.

### AJF workshop on user experience

- 9.2 The final AJF workshop was held in July 2016 and focused on what help and guidance people need when accessing administrative justice, ahead of wider court and tribunal reform programme. The aim of the event was to provide an opportunity for user representatives, practitioners and leaders in the administrative justice sphere to discuss how the user perspective can be made central to the process in order to inform the upcoming reforms. Speakers at the event included the Senior President of Tribunals (Sir Ernest Ryder), Citizens Advice, Law Centres Network, HMCTS, and Cabinet Office.
- 9.3 The key discussion points included:
- **Coordinated approach:** a holistic view of administrative justice is required, with greater cooperation between government departments, agencies and other institutions.
  - **Help and guidance:** only 25% of people with problems seek legal advice. Most people start with a Google search and then contact the agencies they feel will be able to help. Making information accessible and in plain English is essential.
  - **Digitisation and simplification:** it was agreed that digitisation of processes and procedures in courts and tribunals will be beneficial, as long as there are fall back options for those who do not have access to online services. An example of where this is currently working well is Employment Tribunals, where 90% of claims are received online. It was also agreed that the system could be made simpler, avoiding complex processes where possible.

### GOV.UK

- 9.4 HMCTS has been working with Government Digital Services to migrate content from the Justice website to GOV.UK. In keeping with the principles of GOV.UK, the content has been rewritten and simplified to make it more accessible to users. There are, however, some wider challenges with the new unified GOV.UK system. For complaint reviewers and ombudsmen, for example, there is a risk that putting content on the GOV.UK site will affect their reputation for independence and impartiality. But the risk of not including this content on the site is that individuals

may struggle to get the information they need on complaints resolution. Overall the view of the AJF is that while independence is important, it is more important that these services are clearly signposted on the GOV.UK website, with appropriate descriptions of particular services and links.

- 9.5 Generally, the AJF saw the move to GOV.UK as positive: the website is very well designed with clear content. This is increasingly important because rising numbers of litigants in person will require simple, accessible guidance. There was, however, concern among the AJF sub-group that guidance has been over-simplified, and does not contain all the information needed by practitioners and advice workers. MoJ recognises that the information on GOV.UK needs to be accessible and therefore more specialist information can be obtained through signposting to external sites, for example the Leasehold Advisory Service.
- 9.6 The Land Registry website is an example of a site which will not be migrated to GOV.UK as it contains essential technical information and forms which are not compatible with the simplified site.

### **Guidance for leaseholders on recovery of costs**

- 9.7 The AJF also considered and commented on a signposting problem related to recovery of costs in the Leasehold Valuation jurisdiction in the Property Chamber in the First-tier Tribunal, which has been raised by a number of stakeholders. Although costs are not normally awarded in tribunals, some leases allow landlords to include costs which are incurred in connection with proceedings before a tribunal, in service charges, regardless of the outcome of the case. Section 20c of the Landlord and Tenant Act 1985 gives the tribunal a power to prevent landlords recovering their costs in this way. However, not all applicants take advantage of the power that the Tribunal has to make such orders. The AJF sub-group considered the available guidance on the links from the Justice website to the Leasehold Advisory Service 'Lease' website and the way in which the section 20c power is signposted on the application form to the First-tier Property Chamber and made a number of suggestions for redesigning the application form. They also recommended that MoJ carry out further work with DCLG (who have the policy lead on housing issues, including leasehold policy) to consider any further options, including legislation and rule amendments, which might be available to help ensure equal access to the leasehold valuation jurisdiction for landlords and tenants.
- 9.8 DCLG introduced the Housing and Planning Act 2016, which received Royal Assent in May 2016. Section 131 amends Schedule 11 of the Commonhold and Leasehold Reform Act 2002, introducing additional powers for courts and tribunals to restrict a landlord from recovering the costs of legal proceedings from a leaseholder, where an administration charge clause in a lease allows them to do this. DCLG plan to implement these changes via secondary legislation in 2017 and we will work with tribunal stakeholders to signpost these changes.

### **User Surveys**

- 9.9 The MoJ is leading on the surveys and projects below which will provide information on user behaviour and assist with forecasting and planning in the UTS.

- 9.10 The aim of the Civil, Family, and Administrative Justice Problem Resolution Survey is to increase our evidence on the approaches people use to resolve civil, family and administrative justice problems and improve our understanding of flows into the justice system.
- 9.11 The ‘Varying Paths to Justice’<sup>12</sup> project, published on 17 December 2015, is a qualitative research study to identify the critical points at which people make a decision about whether to use a formal means of resolution, such as the court / tribunal system, or seek to resolve their problems via other routes, or do nothing. The research maps the range of pathways people use, their experiences of them, and how effective they perceive them to be.
- 9.12 The Survey of Not for Profit Advice Providers, also published on 17 December 2015, is a quantitative survey of not for profit (NfP) legal advice providers. This report presents the findings from a survey of 718 NfP organisations providing legal advice in England and Wales. The report describes the profile of NfP legal advice service provision, the clients they work with and the matters they advise on, their funding and funding sources, their workforce, details of partnership working, the ways in which their organisations have changed since implementation of the Legal Aid, Sentencing and Punishment of Offenders Act in 2013 and their perspectives of changes required in the future.
- 9.13 HMCTS commissioned a major research project in November 2016, covering a broad range of customers to improve services as part of the court and tribunal reform programme. The new HMCTS service model will be built around the needs of its users and this research is critical to understanding the current customer experience to help prioritise resources to particular areas, identify where customers require better support to access our systems, and to inform customer Key Performance Indicators.

## Wider Research

- 9.14 In 2015 the Nuffield Trust provided funding to establish the UK Administrative Justice Institute (UKAJI) to link research, practice, and policy on administrative justice in the UK. Professor Maurice Sunkin, Head of the Institute, sits on the AJF. Analysts at the MoJ have been meeting regularly with UKAJI and are working with the Institute to maximise the value represented by this resource and identify emerging research issues.
- 9.15 A useful resource compiled by UKAJI is a ‘current research register’ which lists analytical work published and underway. This is regularly updated and is used by MoJ analysts to help identify relevant projects so that results can be summarised to inform policy making.
- 9.16 A November 2016 publication by academics Prof Robert Thomas and Joe Tomlinson, funded by the Economic and Social Research Council, considers administrative review, better initial decisions, and tribunal reform. More specifically:

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<sup>12</sup> <https://www.gov.uk/government/publications/the-varying-paths-to-justice>

- How can government departments and public authorities raise the quality of their decision-making?
- How do internal administrative review systems operate?
- The future of the tribunal system.

9.17 The final report builds on an earlier literature review, and a round table discussion involving a variety of academics, practitioners and government officials including MoJ and HMCTS.

### **Timeliness in Employment Tribunals (ETs)**

9.18 To help drive an improvement in performance, a new internal timeliness measure was introduced across England and Wales in April 2015. The principal performance indicator is the time within which single claims are concluded. The latest performance data (for the quarter to September 2016) indicates that the mean age of a single claim resolved in the Employment Tribunal was 29 weeks; this is a reduction from 41 weeks (for the quarter to September 2015), the aim being to increase the percentage of single claims completed within 26 weeks of receipt. This key performance indicator is underpinned by four subsidiary measures:

- KM1 – Receipt to First Service
- KM2 – Receipt to final Hearing
- KM3 – Receipt to disposal for non hearing
- KM4 – Final hearing to Judgment

9.19 As with any improvement initiatives it will take some time for these improvements to be realised as claims progress through the system. Since the introduction of these new internal measures, management information shows that the number of cases being dealt with within 26 weeks has increased from 65% in April 2015 to 68% for September 2016, along with some improvements against the subsidiary measures. Whilst this figure has stabilised over the last 4 months there has been a more noticeable improvement against the principle indicator with single claims now taking on average 12 weeks less.

9.20 The President of ETs (England and Wales), Judge Brian Doyle, and the President of ETs (Scotland), Judge Shona Simon, presented these new measures to user groups in England, Wales and Scotland. Performance is reviewed on a regular basis, through discussion at board level and within local management teams.

## Communication to users

**Objective 10: To ensure our communications to users encourage efficiency, support fairness and enhance accessibility to the system, and explore opportunities for digitising administrative justice processes to deliver the best service for our users.**

### Employment Tribunals – submitting a claim online

- 10.1 For a number of years, users of ETs have been able to make a claim online and submit it directly to an ET office. In 2014, although 70% of claims were made online, the system did not allow users to save a form and return to it later.
- 10.2 HMCTS worked with MoJ's digital services team to address these concerns and enhance the form. A 'save and return' function was included, which allows users to save incomplete forms and return to them later, logging in with a password. HMCTS and digital services used a small group of both legal and non-legal users to test various iterations of the form. Feedback from these tests helped restructure the forms, so that similar information was grouped together and the wording was simplified.
- 10.3 After these changes were implemented in January 2015, there was a significant increase in the number of claims made online, rising to 88%. HMCTS are currently considering the 12% who are not making claims online, to understand whether refinements can be made, for example clearer guidance, to encourage them to do so.

## Forward look

### Transforming our justice system

- 11.1 On 15 September 2016, the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals published a joint statement setting out their intentions on transforming the justice system, outlining significant reforms to the courts and tribunal system<sup>13</sup> to make it Just, Proportionate and Accessible.
- 11.2 The aims of the wider justice reform programme are:
- to support citizens to present their own cases simply and to obtain justice more swiftly;
  - to reduce complexity in language, process and systems; and
  - to reduce the costs of the tribunal system to taxpayers.
- 11.3 The programme acknowledges that tribunals have changed over the years but that, despite this, the system can still be complicated and inefficient with a heavy reliance on paper documents. Ageing IT systems and complex and bureaucratic processes are barriers to parties preparing and presenting their own cases. Tribunals need reform to support parties to present their own cases simply and to obtain justice more swiftly; to reduce complexity in language, process and systems; and to reduce the costs of the tribunal system to taxpayers.
- 11.4 The transforming our justice system reforms will combine respected traditions with the enabling power of technology. The vision is to modernise and upgrade the justice system so that it works even better for everyone, from judges and tribunal appellants, to legal professionals and representatives. The reforms will be rolled out across all courts and tribunals managed by HMCTS, tailored to the nature of the individual courts or tribunals. Changes include:
- **digitising the whole claims process**, so that claims are able to be made and subsequently processed online, enabling electronic communication between the individuals and the tribunal, simplifying the process, speeding up the resolution of disputes and allowing users to engage with the tribunal at times and locations convenient to them;
  - **delegating a broad range of routine tasks from judges to caseworkers** – this is about allowing procedural decisions that do not determine the outcome of the case to be made at a proportionate level so that judges can focus on those matters where their legal expertise and knowledge is needed thereby speeding up the resolution of cases;
  - **tailoring the composition of tribunal panels to the needs of the case** – this is about ensuring that panel members without legal expertise are asked to sit on panels according to their expertise and the needs of the case. The aim is that this expertise will be available across a wider range of cases, so that claimants

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<sup>13</sup> See Transforming our justice system: <https://www.gov.uk/government/publications/transforming-our-justice-system-joint-statement>

can be confident that the decisions will be fair and informed. It will also speed up the resolution of disputes allowing individuals to have swifter closure; and

- **removing any unnecessary restrictions on how a particular type of case must be determined** – this is about ensuring that simple cases can be resolved by simple methods. It will be based on the specific needs of the dispute and the individual user, speeding up the resolution of disputes and allowing users to engage with the tribunal at times and locations most convenient to them.

11.5 This work is at an early stage and detailed research is underway with tribunal users to understand their needs and requirements. For many people, improving technology and putting more services and processes online will make justice more accessible and simpler than ever before. But the Government recognises that for some people this will present a challenge. Appropriate support will therefore be provided for those who cannot access services digitally, or who need help to do so. In designing different services, support will always be tailored around the needs of those who will use them.

11.6 The Transforming our Justice System consultation and response can be found at <https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals/>

## Reforming the Employment Tribunal system

11.7 On 5 December 2016 the Government launched a consultation on its plans for applying the principles of wider court and tribunal reform to the employment tribunal system as part of the Reforming the Employment Tribunal System consultation. The reforms are underpinned by three design principles to ensure an employment tribunal system that is just, proportionate and accessible.

11.8 The Employment Tribunals Act 1996 which determines how cases are managed in the Employment Tribunal system needs updating to allow these reforms to be delivered and allow a more flexible legislative framework to address future developments. The powers in the Employment Tribunals Act 1996 are more restrictive than the equivalent powers in the Tribunals, Courts and Enforcement Act 2007 which apply to most other tribunals. The full scope of planned reforms would not be able to be implemented under the current framework.

11.9 Tribunals will be able to make rules more flexibly and responsively to determine how cases are managed in employment tribunals and the Employment Appeal Tribunal. As with all other tribunals, the power to make procedural rules will be conferred on the independent Tribunal Procedure Committee whose membership will be amended to reflect the Committee's wider remit. This will enable any necessary new rules to be scoped, developed and implemented promptly based on user feedback.

11.10 The revised powers in respect of procedure rules and panel composition for the Employment Tribunal system are modelled on those contained in the Tribunals, Courts and Enforcement Act 2007 which apply to the unified tribunals system.

11.11 The Reforming the Employment Tribunal System consultation and the Government response can be found at <https://www.gov.uk/government/consultations/reforming-the-employment-tribunal-system>

## Acronyms and abbreviations

ADR	Alternative dispute resolution
AJAG	Administrative Justice Advisory Group
AJF	Administrative Justice Forum
AJTC	Administrative Justice and Tribunals Council
BEIS	Department for Business, Energy and Industrial Strategy, formerly known as the Department for Business, Innovation and Skills
CGCF	Cross Governmental Complaints Forum
DCLG	Department for Communities and Local Government
DfE	Department for Education
DFT	Detained fast track
DLA	Disability Living Allowance
DWP	Department for Work and Pensions
EHC	Education, Health and Care
ESA	Employment Support Allowance
EAT	Employment Appeal Tribunal
ETs	Employment Tribunals
GDS	Government Digital Services
HO	Home Office
IAC	Immigration and Asylum Chamber
IRP	Independent Review Panel
JR	Judicial Review
LA	Local Authority
PDR	Proportionate dispute resolution
PACAC	Public Administration and Constitutional Affairs Committee
PASC	Public Administration Select Committee
PHSO	Public Health and Services Ombudsman
RUCAT	Road Users Charging Adjudicators' Tribunal
SEND	Special Educational Needs and Disability
STS	Scottish Tribunal Service
TPC	Tribunal Procedure Committee
VTE	Valuation Tribunal England
VTs	Valuation Tribunal Service

## **Jurisdictions outside the unified structure supported by HMCTS**

Employment Tribunals

Employment Appeal Tribunal

Gender Recognition Panel

Proscribed Organisations Appeals Committee

Reserve Forces Appeal Tribunals

Special Immigration Appeals Commission

Gangmasters Licensing Appeals

Pathogens Access Appeal Commission (PAAC)

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