THE

ANNUAL REPORT OF THE

COUNCIL ON TRIBUNALS

FOR

1997/98

Laid before Parliament by the Lord High Chancellor and
the Lord Advocate pursuant to section 4(7) of the
Tribunals and Inquiries Act 1992

Ordered by the House of Commons to be printed
15th December 1998

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THE COUNCIL ON TRIBUNALS

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R John Elliot Esq WS, Chairman of the Scottish Committee (from 1st June 1998)
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CONTENTS

APPENDICES

The Chairman of the Council, Lord Archer of Sandwell PC QC *(on the left)* and the Chairman of the Scottish Committee, T Norman Biggart Esq CBE WS on the occasion of Mr Biggart's retirement from the Council in May 1998.

PREFACE

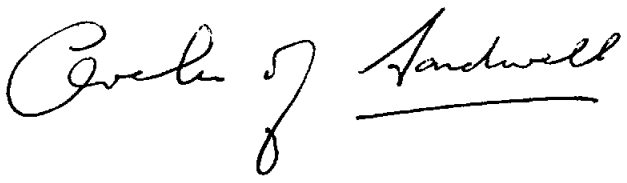
This year has witnessed substantial changes to some of the tribunal systems within our supervision. The Independent Tribunal Service, Education Appeal Committees and Employment Tribunals have all been the subject of major legislation, and there are proposals for changes to the Immigration appeal authorities, Mental Health Review Tribunals, Parking Adjudicators, and planning and tax appeals.

Some are changes which we had ourselves been urging. Some are controversial, arising from the need to cope with an increasing workload without any corresponding increase in resources. In few cases are all the arguments one way. Most involve balancing advantages and penalties.

Our contributions to the debates are based on our experience over forty years, our opportunities for observing a wide spectrum of tribunals and inquiries, and the range of expertise which is generously made available to us from many sources. We appreciate the willingness of ministers, officials and tribunal heads to respond to our suggestions, acknowledged in this Report.

The elements of a tribunal culture are not easy to define, but it is no longer in question, if it ever was, that the tribunals and inquiries which define our remit share a range of characteristics and challenges, and that each may benefit from experience and insight derived from the others. To introduce changes to any one system without reference to the others would be to miss a valuable opportunity.

Our first responsibility is to respond to requests for advice evoked by specific situations, but we try to husband sufficient time and resources to stimulate reflection on their wider implications. We welcome contributions from readers of this Report.



Lord Archer of Sandwell PC QC
Chairman

INTRODUCTION AND SUMMARY

1. This, the thirty-ninth Annual Report of the Council on Tribunals, describes many aspects of our work during the year from 1st August 1997 to 31st July 1998. It has been a very busy year. The report refers to our advice upon proposals for new tribunals and other appeal procedures, to our work on other initiatives, and to the way in which we have kept under review the working of the tribunals and inquiries subject to our supervision and scrutiny. It also records the impact within a variety of contexts of our special report **Tribunals: their Organisation and Independence**[1] published in August 1997.

2. The report is made to the Lord Chancellor and the Lord Advocate and laid before Parliament by them in accordance with the terms of our governing Act, the Tribunals and Inquiries Act 1992. Our Scottish Committee publish their own Report covering their work in substantial detail. Their Report is not submitted to Parliament, but it has a wider circulation in Scotland than is customary for our Report.

3. **Part I** of this Report describes in some detail a number of issues of both special and general interest that have arisen during the course of the year. The issues are as follows:

   - **The Social Security Act 1998**: we report on the passage of the Bill through Parliament and the important amendment secured by our Chairman, with Government support, which makes it a requirement to have a legally qualified member on each new appeal tribunal (paragraphs 1.2 - 1.20).

   - **School Standards and Framework Act 1998**: our Chairman also made a valuable contribution to the debate on this legislation which adds the new adjudicator to our jurisdiction. We were pleased to note the Government's firm commitment to the training of appeal panels and the new adjudicator (paragraphs 1.21 - 1.42).

   - **The Human Rights Act 1998**: we examine the implications for tribunals of the incorporation of the European Convention on Human Rights into UK domestic law, and emphasise the need for appropriate training (paragraphs 1.43 - 1.56).

4. **Part II** contains a selection of other issues which we have considered during the year. This includes our advice on topics as diverse as data protection, devolution and the National Lottery.

5. **Part III** records details of our membership and its changes during the course of the year together with further details of our activities. It also refers to the carrying out of the customary five-yearly review of the Council, in its capacity as an advisory non-departmental public body, by its sponsoring Government department, the Lord Chancellor's Department. This review, which was started late in 1997, has yet to be completed.

[1] Cm 3744

PART I: MAJOR ISSUES

1.1 In this part we review several issues of particular importance which have arisen during the year.

Social Security Act 1998

1.2 **The Social Security Act received Royal Assent on 21st May 1998. The Act's provisions will, amongst other things, change the structure for dealing with social security and child support appeals. The functions of all the current tribunal jurisdictions will be dealt with under a new single tribunal system. The judicial element of the unified appeal tribunals will be led by a President. A new appeals service agency, headed by a Chief Executive, will administer appeals within targets set by the Secretary of State. These changes are so far-reaching that their implementation is to be staged, although decisions have still to be finalised on how this will be achieved.**

Our concerns

1.3 We argued in last year's Annual Report that radical changes to the appeals process should not be invoked before the effects of improvements to the initial decision-making stage had been assessed. Errors made at the decision-making stage contribute to the appeal tribunals' heavy workload. We also pointed out that there had scarcely been opportunity to assess the impact of the substantial changes to the appeals procedures introduced in late 1996. Our prime concern, however, was in respect of the constitution of the proposed unified appeal tribunals. We could see no justification for supporting a move away from a three-person tribunal, whether to a one-person or two-person tribunal. In particular, we did not approve of any measure that would result in an appeal being decided by a non-legally qualified panel member sitting alone. We were also concerned that the new provision would exclude from the system the present experienced lay membership, many of whom give their services on a voluntary basis.

Legally qualified tribunal members

1.4 Following earlier debate in both Houses of Parliament about the issue, our Chairman moved an amendment at Report Stage in the House of Lords[1] to include within an appeal tribunal, a member with a legal qualification. He emphasised that the principal expertise required is that of conducting a tribunal hearing; of identifying the issue which falls to be decided; and of marshalling the arguments which have been presented. He pointed out that this is an expertise which is more likely to be found among lawyers. The Chairman urged that at least one member of the tribunal should have such a legal qualification, leaving it to the President to decide who should take the chair on any specific

[1] Hansard, House of Lords, 20 April 1998, vol. 558 cols. 948-952

occasion. He hoped that, if the tribunal consisted of more than one member, the member with the legal qualification would normally be in the chair. The amendment was agreed.

Government support

1.5 The Lord Advocate confirmed that, in looking at the number of appeals which could properly be dealt with by a single non-legally qualified panel member and the administrative arrangements for selecting those appeals, it had appeared that less than 5 per cent of appeals could be dealt with in this way. The Government had concluded that there would be little benefit in introducing such arrangements and therefore accepted the amendment. The Lord Advocate indicated that the greater flexibility introduced by streamlining the appeals system would not mean a gradual move towards single person tribunals as the norm; indeed, the majority of appeals would continue to need two or three-person tribunals because of the nature of the issues raised. We understand that the change effected by the amendment was welcomed by the Independent Tribunal Service (ITS). We remain of the firm view that the majority of appeals on issues relating to social security should be dealt with by a three person tribunal. **Nevertheless we regard the provision for a legal member on each tribunal as a distinct improvement on the arrangements first proposed.**

Social Security Appeal Tribunals Transitory provision

1.6 The new appeal arrangements are to come into force on a date to be appointed by Order of the Secretary of State. However, a transitory provision gives wide scope to the President of ITS to constitute a Social Security Appeal Tribunal (SSAT) with less than the usual complement of three members, pending implementation of the main provisions of the Act. The impetus for this change was provided by the new President, Judge Michael Harris, who was appointed in March 1998. The President anticipated problems in operating the SSATs effectively in the face of increasing resignations from members who, given the proposed changes, had become less willing to sit on the SSATs. The President thus proposed that the forthcoming changes be tested by taking immediate steps in some SSAT cases to reduce the lay element of the tribunal where the ability of the tribunal to reach a proper and fair decision would not be impaired.

President's guidance

1.7 In order to assist the SSATs chairmen and members who could be operating within two different systems, the President issued guidance to chairmen and members in July 1998 on appeals being dealt with under the transitory provisions. The guidance set out three situations in which a tribunal could be constituted with less than three members. These situations include applications to set aside, and appeals to be determined on the papers where the parties have been given advance notice of the legislative change. The appeals in such cases can be heard by a legally qualified chairman sitting alone. The provision will also apply to oral hearings where the appeal can proceed in the absence of one or two lay members. Such cases will be subject to the proviso that the appellant has been notified of the legislative change, and that one or both members have cancelled their attendance in advance of the hearing. The clerk will have had to have made all reasonable efforts to find replacement members without success.

1.8 The President sought our views on the changes and how best to implement further changes to the constitution of SSATs, as permitted by the transitory provision. In our response, recognising that the provision for a reduction in tribunal membership would have full effect once the main provisions of the Act were in force, we endorsed the step by step approach to implementation of the transitory provision. We welcomed the President's intention to monitor the operation of the changed arrangements. The President confirmed that tribunal clerks had been issued with guidance on the implementation of the provision. Furthermore, ITS literature had been amended to give appellants advance notification of the legislative change. The President also informed us that the feedback on resignations of lay members was patchy in that, in some areas, there was no difficulty but, in others, there was evidence that it was harder to find lay members to sit on a SSAT. We expect to discuss how the transitory provision has worked out in practice when we meet the President in late 1998.

A new Appeals Agency

1.9 One of the features of the new system is the proposed establishment of a new executive agency to administer appeals. We have asked to see the framework document under which the agency will operate. We understand that a decision on the timing of the issue of the document will be taken during Summer 1998. The agency will be headed by a Chief Executive who will have the power to appoint staff. In this respect the duties of the Chief Executive of the appeals service Agency are similar to those currently carried out by the Chief Executive of the ITS. We understand that most of the current ITS administrative staff are likely to transfer to the new agency as its processing staff. The powers that are currently given to the tribunal clerks will also be carried forward in the forthcoming regulations.

Targets and standards

1.10 The Department propose that the Secretary of State will set targets for the clearing of appeals by the Agency. We report the recent achievements of the ITS in clearing appeals in paragraph 2.146. The Chief Executive will have responsibility for monitoring and reporting on quality standards. The Chief Executive may be appointed accounting officer, directly responsible to Parliament. However the administration of the appeals service will be separate from the judicial function. The President will be the judicial head of appeal tribunals. We were pleased to note that the Lord Advocate, in addressing issues of independence and accountability in the Parliamentary debate, made reference to our special report **Tribunals: their Organisation and Independence**.[1]

Standards of decision making

1.11 We reported last year that we considered that the Chief Adjudication Officer should retain his functions of monitoring standards of decision-making. An amendment moved by Lord Goodhart at Report Stage in the House of Lords would have introduced an Adjudication Standards Commissioner to undertake duties of the kind carried out by the Chief Adjudication Officer, whose functions have been removed by the provisions of the Act, but this was withdrawn. A Government amendment has provided for the Secretary of State to report annually on standards of decision-making made in the Department's agencies.

[1] Cm 3744

Furthermore, the President of appeal tribunals will be required to provide, in an Annual Report on the functions of tribunals, observations on the quality of the original decisions in those cases which come before an appeal tribunal.

"GAPs" - a new computer system

1.12 The ITS had already been developing a new computer system, the Generic Appeals Processing System, which is to be enhanced for the new appeals system. According to the Department, the President will arrange for details of all panel members and their expertise and qualification to hear certain types of appeal to be entered on a database. The database will include information on types of cases and whether the member can sit alone or with others. The President will be responsible for nominating the chairman of a two or three-person tribunal. The appeals service staff will use the database to allocate cases to tribunals having the particular expertise required to deal with the issues raised. The Department expect that the grounds of appeal and the supporting information from the Benefits Agency, the Employment Service or the Child Support Agency, on the reason for the decision will generally provide sufficient information to decide the appropriate tribunal constitution. Advice will be available from legally qualified members in cases that are borderline or present difficulties.

Regulations

1.13 In response to issues raised by our Chairman during Committee Stage in the House of Lords, the Government moved an amendment to make it clear that there are to be regulations (which will invoke the affirmative resolution procedure) to provide for the composition of appeal tribunals; the procedure to be followed for allocating cases among differently constituted tribunals; and the manner in which expert help is to be given to the tribunal. The Department of Social Security are fully aware about our requirements for consultation on draft regulations, in particular where the regulations may require our close attention. We expect during October 1998 to be consulted on several sets of regulations. The Department have already shared with us information which provides a brief outline of the new arrangements for sifting and allocating appeals.

1.14 The Lord Chancellor will make appointments to a single members' panel for the whole of Great Britain, and the qualifications that persons must have to be included in the panel will be prescribed in regulations. We understand that the Lord Chancellor will appoint persons to the panel with the necessary qualifications to deal with the wide range of issues raised in appeals. For this purpose the Lord Chancellor will consult the Chief Medical Officers in England, Wales and Scotland, as appropriate, before appointing medical practitioners to the panels. The President will select members according to their individual expertise to make up the appeal tribunals. The Department of Social Security intend that regulations will set out very clear criteria for the allocation of cases to appropriately constituted tribunals, on which the President will be consulted. The Department also intend that the regulations will specify minimum levels of qualification and experience, including formal legal, medical and financial qualifications. They will also specify the need for persons who have no formal qualifications but who have knowledge or experience of particular issues, such as the needs of disabled persons.

The appeal tribunals will have access to expert advice to deal with issues of special difficulty.

1.15 We understand that the Department expect that the new arrangements, once they are fully in place, will mean that more than half of all appeals will be heard by two-person tribunals, with about a quarter falling to one-person and about a quarter to three-person tribunals. The Department envisage that disability living allowance appeals will continue to be heard by a three-person tribunal comprising a legally qualified member, a medical member and a panel member with knowledge or experience of the needs of disabled people. They also expect that appeals on Incapacity Benefit will be heard by a legally qualified member and a medical member.

Appellants
Oral hearings

1.16 The Department intends that the appeals service should inform appellants how their appeal will be handled, including what kinds of appeal tribunal will hear particular sorts of cases. If new facts or information emerge before or at a hearing that requires specialist advice or consideration, the hearing may be re-scheduled or adjourned. The Department also anticipate that if the tribunal considers it has insufficient expertise to deal with the case properly, it should adjourn the hearing. One of our concerns relates to the possibility that, once the new arrangements are fully in place, appellants might feel that they should opt for a hearing on the papers alone. This facility has been available since the regulation changes of 1996. We have urged the President to ensure that letters to appellants should point out to them that they stand a better chance of success if they ask for, and attend, an oral hearing. The President agrees that this advice should be given to appellants, although certain categories of appeal might be more appropriate for a determination on the papers alone. Apparently the ITS plan that where appellants do not indicate the form of preferred hearing, appeals will be struck out, with a power to reinstate for good cause.

Training

1.17 The new arrangements will undoubtedly result in a need for further training which will be, as it is currently, the statutory responsibility of the President. In accordance with the statutory requirement on him, the Department expect the President to consult the Chief Medical Officers for England, Wales and Scotland before arranging training for medical practitioners. The President will also be expected to consult the Secretary of State before arranging the training of all other panel members. Indeed, during Committee Stage in the House of Commons, the Parliamentary Under-Secretary of State confirmed that training would be a pre-condition of tribunal membership. It is also anticipated that there will be a need for the present medical assessors, and other new appointees to the members' panel, to be trained in decision-making and other skills. In our view, training will undoubtedly be required for the chairmen contemplating having to deal with appeals without the valuable assistance of other members. The need for training under the new arrangements will extend to the appeals service administrative staff.

Housing Benefit Review Boards

1.18 When, in October 1996, we responded to the original consultation paper which outlined the proposals for change to decision-making and appeals, we urged again the transfer of housing benefit and council tax benefit issues to the social security appeals system. During the course of the legislative passage of the Act we asked the Department of Social Security what their long-term plans were for the resolution of these disputes. We have long argued that current arrangements are quite unsatisfactory. We were informed that the Government's future plans await the outcome of the general review of local government finance. We await further information with interest but urge that the opportunity to integrate housing benefit reviews (which are primarily a social security matter) into the new appeal arrangements now be seised.

Implementation

1.19 The Department have under consideration the question of timing for the implementation of the provisions in the Act not covered by the transitory provision. We understand that the earliest date for implementation is June 1999. One issue still to be resolved concerns the possibility of implementing these provisions in stages, due to the scale of the required changes within the Benefits Agency. If this were to be the case, we anticipate that there could be administrative problems for ITS in having to operate two systems at the same time.

1.20 **We look forward to being consulted on the various sets of regulations to be made as a result of this legislation. We have an interest in a wide range of questions. Our interest lies not just in proposals for procedures and time limits for appeals, but also in arrangements for the selection of panel members and individual appeal tribunals. We also wish to examine the framework within which the appeals service is expected to operate. We will report further next year as detailed implementation proceeds.**

School Standards and Framework Act 1998

1.21 **The School Standards and Framework Act received Royal Assent on 24th July 1998. One purpose of the Act is to make new provision with respect to education in schools. The Act also makes provision for the constitution of appeal panels (formerly appeal committees) to deal with admission and exclusion appeals, and establishes an adjudicator in England to deal with disputes relating to school admissions. In Wales the Secretary of State will determine any disputes between admission authorities. The Act provides for our supervision over the adjudicator in England.**

Our views and advice

1.22 We feel reasonably satisfied with the Act. We welcome the Government's commitment to deal in guidance with several issues of concern to us, which they confirmed during the Act's legislative passage, and following amendments moved by our Chairman at Committee Stage in the House of Lords. By his efforts, our Chairman has done much to achieve the aims which we had earlier expressed to officials dealing with policy concerning admissions and the proposed

new adjudicator. Our advice was repeated in our response to a Technical Consultation Paper in October 1997 and in our response to the draft Bill in January 1998. As ever, we find that the Department for Education and Employment are receptive and willing to discuss our views and to seek our advice even if, ultimately, the Department cannot accommodate fully what we would wish to see in legislation. Nevertheless, we are hopeful that our contribution to the debate on the changes to be made to the appeals system by the Act will prove to be beneficial.

Appeal Panels Membership

1.23 We approved of the proposal made in the Consultation Paper to introduce more independence to the constitution of the appeal panels (as they are to be named) which will deal with school admission and exclusion appeals. The independent status of the appeal panels' composition will be addressed by disqualifying from membership members of the local authority or governors. In discussion with officials we urged that the maximum number of members on a panel should be reduced to five (from the current limit of seven) since a large number of members may appear intimidating to appellants. This would still ensure that arrangements for a hearing can continue with three members if the membership has to be reduced for any reason. Our argument was accepted and the provision made by the Act is for a maximum number of five. Furthermore, at Committee stage in the House of Lords, the Government moved an amendment which provides for a panel to continue with reduced membership (that is, to three members) if a member dies or is taken ill during the course of a series of appeals, as we advised. We outline below the range of advice that we have given to the Department during the year about the new arrangements.

Exclusion appeals

1.24 We have frequently made clear our concern about the inconsistent level of performance of appeal committees handling exclusion appeals. We suggested to officials, and in our response to the Consultation Paper, that there was an argument for raising the standard by which exclusion appeals are handled by removing the responsibility for making arrangements for hearings from local education authorities, or school governors, and passing responsibility to regionally appointed committees. As previously recorded in our Annual Reports, we have also argued that there is a case for exclusion appeals to be dealt with by the Special Educational Needs Tribunal, or a similarly constituted body. The Bill included provision for the arrangements for all exclusion appeal hearings to be made by the local education authorities. We acknowledged that this provision was an improvement on the current provisions, although we remain of the view that a better approach to the handling of exclusion appeal hearings would be achieved were arrangements to be made on a regional rather than a local basis.

Reasons for decisions

1.25 Earlier this year, during a meeting between our secretariat and officials on exclusion appeal arrangements, the Department were asked to consider making a provision whereby, when a case is before the school governors for their consideration as to reinstatement, they should be required to give reasons for their decision not to reinstate. We repeated this advice when making observations on the Bill. We pointed out that

it is from the decision reached by the governors at this stage that an appeal can be made. We said that if this stage of the procedure were to be better focused, then the governors' full reasons should be available to the relevant person and, ultimately, to an appeal panel if the relevant person wished to appeal.

1.26 The Government moved an amendment to the Bill, which was agreed to by the Opposition, to rectify the position described above and require the governing body to set out a statement of their reasons for upholding a permanent exclusion when notifying the parents of the outcome of their consideration of the case. The amendments moved by our Chairman would have required also that the governing body's reasons why they agreed or disagreed with the headteacher's decision to exclude the pupil be given to the headteacher. He pointed out the importance of everyone knowing the governing body's reasons, for instance, the staff concerned, who would have to live with the decision. The Government considered that it would be unnecessary to put such a requirement on the face of the Bill, but indicated that they intended to cover the point in guidance.

Legal Chairmen

1.27 We urged in our response to the Consultation Paper, in our comments on the Bill, and through our Chairman when speaking to the amendment which he tabled to introduce such a requirement on the face of the Bill, that an appeal panel dealing with an exclusion appeal should be chaired by someone with a legal qualification. As our Chairman said on that occasion,[1] an appeal to determine whether a child should be permanently excluded from school is perhaps the nearest analogy to penal proceedings among statutory hearings. Our Chairman referred to the research carried out into exclusion hearings by Professor Neville Harris[2] whose preliminary conclusions, following researchers' observations of more than 40 exclusion appeal hearings, was to the effect that a lawyer chairman would help to reinforce the independence of the committee and be more effective in handling oral evidence given by children and giving reasons. We share that view, and have been urging such a change for several years.

1.28 In the debate on the amendment, the Minister of State, Baroness Blackstone, said that the introduction of a requirement that the chairman of an appeal panel be legally qualified may make it difficult to convene a hearing within the strict time limits which apply in exclusion hearings. However, she said that the Department intended to use guidance to emphasise the importance of having a suitably qualified chairman and to emphasise that a legal qualification will often be an advantage.

Training

1.29 We emphasised to officials that we maintained the view, expressed in our past Annual Reports, that appeal panels should be properly trained. We reaffirmed our view in our comments on the Consultation Paper and on the Bill. We urged that there should be a requirement in the Bill for local education authorities to provide the necessary resources for

[1] Hansard, House of Lords Committee Stage, 8 June 1998, vol. 590 cols. 756 - 759

[2] Some of the findings will be published in "Administrative Justice in the 21st Century" (see footnote to paragraph 2.5). A book of the research is not expected to be published until Spring 1999.

training appeal panels. The Department have acknowledged that our survey of training for appeal committees which we had provided to them and to the Tribunals Committee of the Judicial Studies Board (mentioned in our Annual Report for 1996/97) had provided a useful picture of training provision. The Department informed us that they were in contact with the Judicial Studies Board and were to offer places on a Training the Trainer course to the local authorities who had indicated that they provided no training. Additionally, the Department would be drawing on the experiences of the authorities who organised training, and had not lost sight of the possibility of organising training on a regional basis.

1.30 Although we welcomed the steps that were being taken by the Department, in conjunction with the Judicial Studies Board, we also suggested in our response to the Consultation Paper that consideration be given to the targeting of one person in a locality to carry responsibility for training. In responding to the Bill, we suggested that there should be an obligation on local education authorities to provide the necessary resources for training appeal panels. Our Chairman moved an amendment which would have required that it be the duty of the authority (in exclusion appeals) and the authority or governing body (in admission appeals) to ensure that no person could be appointed to an appeal panel, or be chairman of an appeal panel, until that person had undergone a period of training in the conduct of appeals. Our Chairman made clear our continued willingness to help. Although the Chairman's amendment was withdrawn, we were pleased to note the Government's response, and their commitment in respect of training which will be emphasised in the statutory Codes of Practice and the guidance. The Minister indicated that funding has been earmarked and that we would be fully consulted about training and guidance. Investigations by the Local Government Ombudsmen have provided ample evidence of the need for such training.

Guidance
Statutory Codes of Practice

1.31 When we provided our views on the Bill we said that we welcomed the provision requiring a statutory Code of Practice on admissions for a wide range of bodies (which includes the appeal panel and the adjudicator). There will be a separate Code of Practice for Wales. Appeal panels will have to have regard to statutory guidance in respect of both exclusion and admission appeals. The Government moved an amendment, also at Committee Stage in the House of Lords, to require that schools, local education authorities and appeal panels have regard to new guidance on exclusions. In respect of admissions, we noted that an appeal panel will be constrained in its decision where admitting a child would increase a class of 5, 6 or 7 year olds above the statutory maximum. We considered that the provision of detailed guidance should supplement any training provided for the appeal panels. We understand that the draft guidance for exclusion handling will be issued for consultation during the autumn of 1998. One issue that will be resolved in guidance on exclusions relates to the factors which should be taken into account by an appeal panel when deciding whether to reinstate a pupil who has been permanently excluded. The Department has already taken steps to issue interim guidance on admissions, and we

understand that the draft statutory Code of Practice to be issued in England and Wales was being worked on during the summer of 1998. A separate statutory Code of Practice on admission appeals will issue later. The Department will involve us in producing that Code.

Appeal Hearings
Observers

1.32 We noted that the Bill included a provision that would give the right to a governing body to have an observer at an appeal hearing. The local education authority has always had the right to have an observer present. We raised this issue with the Department in our response to the Bill. We said that removing these rights to observe a hearing would further emphasise the independence of the appeal panel from the body which has made the appeal arrangements, and would also alleviate any risk of the appellant feeling outnumbered. The Department explained that the provision had been included to give governors the same rights as members of the authority to observe hearings. We suggested that the point could be covered if the right to observe a hearing was made subject to the agreement of the parties and at the discretion of the appeal panel. When the Bill reached Committee Stage in the House of Lords our Chairman moved an amendment to restrict observers. The Government responded by moving an amendment which will allow a member of the authority or a governor of the school concerned (in the case of an admission appeal) to observe a hearing if the appeal panel so directs. The intention is that the appeal panel would hear representations from the parties involved and come to a decision on whether observers should be allowed. Our right to observe a hearing including the panel's deliberations is not affected.

Appointment of chairmen

1.33 We informed officials that we had reservations about the practice sometimes adopted whereby the chairman of the committee was chosen by colleagues on the day of the hearing. We pointed out that the chairman's role was of much importance and needed proper preparation. We suggested that, in admission cases, the chairman be nominated by the admission authority. So far as exclusion appeals are concerned, as we have maintained throughout, we consider that hearings of such importance should be chaired by someone having a legal qualification. Our Chairman also moved amendments to the same effect, suggesting as a fall back position on exclusions that the chairman be nominated by the local education authority. In responding, the Minister made clear that guidance will state that the local education authority should appoint the chairman in an exclusion appeal and the admission authority should appoint the chairman in an admission appeal.

Adjudicator
A new jurisdiction in England

1.34 In September 1997, when we met Departmental officials, the proposals for the new adjudicator for school organisation and admissions issues were still being developed. The purpose of the new policies both on school organisation and admissions issues was to enable decisions to be taken locally as far as possible. The adjudicator would become involved only when the local decision-making process had failed to reach a definite agreed outcome. Decisions on disputes about school admissions arrangements which involve religious and denominational criteria will go to the Secretary of State.

1.35 Our understanding was that future school organisation proposals, including whether to open, enlarge, close or change the character of a school in England, would be taken by School Organisation Committees, rather than as currently by the Secretary of State. School Organisation Committees would also decide school organisation plans. The adjudicator would take over decisions on both issues if the School Organisation Committee were unable to reach agreement. We were informed by officials that the adjudicator for a particular area would be allocated on the basis of his availability. In practice, it was envisaged that either an officer of the authority would refer to an area regional office, or the arrangements would be made centrally by civil servants from the Department.

Establishing the Adjudicator's powers

1.36 It was critical for our consideration of the operation of the new body, in particular as to whether the body was a "tribunal" in the accepted sense, to establish the range of issues for which responsibility would fall to the adjudicator. At that stage, the Department had considered that we would have a role in supervising the process on school organisation issues, although there was uncertainty as to the extent to which the functions of the adjudicator would fall within our remit. Although the adjudicator was to have the power to hold a public inquiry, officials confirmed that there had been no circumstances where the Secretary of State had used powers existing since 1993 to hold a public inquiry. We had in mind that it would be appropriate for our supervisory jurisdiction to extend to the adjudicator when holding an inquiry; officials confirmed that the adjudicator's role would be analogous to those in other areas of persons conducting public inquiries.

1.37 We suggested to the officials that to describe the adjudicator as such might bring pressure upon him to hold a public inquiry to determine controversial issues. Officials envisaged that built in to the new arrangements would be stages for people to have their say in writing. Moreover the categories of people with the right to object would be defined. It was hoped that the School Organisation Committees would see all proposals, whether or not there were any objections. We pointed out the inevitability that, by the time the matter reached the adjudicator, people would be urging that there be a public inquiry.

1.38 We suspected that, in reality, the School Organisation Committees might not be able to reach agreement. However, officials confirmed that a Committee would have to reach unanimity for matters to rest at that level. We also noted that following the referendum in favour of a Welsh Assembly, the position had changed in Wales because the likelihood would be that the Assembly would have devolved to it responsibility for school organisation issues. In Wales local education authorities currently draft, consult on, and adopt their own school organisation plans. In our consideration of the functions of the adjudicator we envisaged that in some respects he would be considering general policy issues, some of which would be dealt with on the papers alone. However, we decided to inform the Department that, subject to having more information about how the adjudicator would operate, we would confirm our willingness to have jurisdiction over all his functions.

1.39 At Third Reading in the House of Lords concerns were expressed about the devolution of powers to the School Organisation Committees of the decision-making status of the Secretary of State and, where a final decision is needed on proposals in respect of which there is no unanimous decision, to the adjudicator. There will be no right of further appeal. The Minister confirmed that the adjudicator would consider all issues in the light of principles set out in public guidance from the Secretary of State and, as appropriate, in the Code of Practice on school admissions. The adjudicator would be able to invite oral representations and would have to give reasons for decisions. In the House of Commons, the Parliamentary Under-Secretary of State made clear the intention to require a School Organisation Committee to refer a proposal to an adjudicator if it had not come to a decision within a specified period; the intention being that the period concerned should be two months. Some objections to the provision were made because the adjudicator will be a person having no connection with locally elected representatives. Another amendment, made in the House of Lords, and agreed to by the House of Commons, provides a mechanism for parents to refer the question of an admissions policy affecting them locally to the adjudicator.

Consistency of approach

1.40 We had pointed out to the Department, when responding to the Bill, that the adjudicator will be involved in very controversial issues. It would be necessary to address issues such as the maintenance of standards by them and how to achieve a consistent approach between adjudicators throughout the country in the application of regulations or guidance that would apply to their operations. We suggested that there was a need for direction from the centre and that, since the Department was establishing, effectively, a new tribunal-type jurisdiction the Department might have particular regard to our special report **Tribunals: their Organisation and Independence**.[1]

1.41 We also urged that there be arrangements for training the adjudicators. We suggested that there be an obligation placed on the Secretary of State, as the appointing body, to provide the resources for training the adjudicators. Again, our Chairman moved an amendment to include a provision for training on the face of the Bill but withdrew it, the Government having stated their commitment to training for the adjudicators on which we will be consulted. When speaking in the House of Lords on consideration of the House of Commons Reasons and Amendments, the Minister confirmed the importance of the adjudicators being trained and expert people, able to reach decisions on the basis of the facts of each case and the principles set out in guidance.

1.42 **We have given close attention to the progress of this legislation. We intend to contribute to the debate about the training and guidance which will be available to the bodies that will be dealing with the appeals and disputes arising under the provisions of the Act. We will report progress next year.**

[1] Cm 3744

Human Rights Act 1998

1.43 **The Human Rights Act 1998 incorporates the European Convention on Human Rights into United Kingdom domestic law. Henceforward the rights and freedoms guaranteed under the Convention may be invoked in all United Kingdom courts and tribunals. This has major implications for the working of tribunals.**

European Convention on Human Rights

1.44 The European Convention on Human Rights was a product of the post-war era. The United Kingdom played a major part in the drafting of the Convention, and was among the first group of countries to sign it. It was the first country to ratify it, in March 1951.

1.45 The rights and freedoms guaranteed by the Convention cover such matters as the right to life; freedom from torture or inhuman and degrading treatment; freedom from slavery and forced labour; liberty and security of the person; fair trial; retrospective criminal laws; respect for private and family life; freedom of thought, conscience and religion; freedom of expression; freedom of peaceful assembly and association; the right to marry and found a family; and freedom from discrimination in the enjoyment of these rights. The First Protocol to the Convention covers protection of property, the right to education, and the right to free elections.

1.46 Until now, the Convention has not formed a part of United Kingdom domestic law. UK citizens wishing to assert rights under the Convention have had to take their cases to the European Commission and Court of Human Rights in Strasbourg. The United Kingdom granted citizens the right of individual petition to those bodies in 1966, but a petition is not admissible until all domestic remedies have been exhausted.

Human Rights Act 1998

1.47 The Human Rights Act 1998 alters the position radically. In effect, it incorporates the rights and freedoms under the Convention into our domestic law. It does so without interfering with the sovereignty of Parliament, which will continue to have power to pass laws that are inconsistent with the Convention, even though that would be in breach of the United Kingdom's international obligations. However, from now on the Convention rights may be relied on in any UK court or tribunal.

1.48 Under the Act, a court or tribunal determining a question in connection with a Convention right must take account of relevant judgments, decisions, declarations and opinions made or given by the European Commission and Court of Human Rights and the Committee of Ministers of the Council of Europe. This means that all courts and tribunals will have to make themselves familiar with the jurisprudence that has accumulated around the Convention.

1.49 The Act provides that primary and subordinate legislation, whenever enacted, must as far as possible be read and given effect in a way which is compatible with the Convention rights. However, this does not affect the validity, continuing operation or enforcement of any incompatible

primary legislation, or any incompatible subordinate legislation if primary legislation prevents the removal of the incompatibility. The higher courts will have power to make a "declaration of incompatibility" in such circumstances. A special fast-track procedure for amending legislation will be available where a declaration of incompatibility has been made.

1.50 The Act makes it unlawful for a public authority to act in a way which is incompatible with a Convention right, unless that would be inconsistent with the effect of primary legislation. The term "public authority" includes courts and tribunals, and any person certain of whose functions are of a public nature. A person who claims that a public authority has acted (or proposes to act) in a way which is unlawful, because incompatible with a Convention right, may bring proceedings against that authority under the Act, or may rely on the Convention in any legal proceedings, provided he is or would be a victim of the unlawful act. A court or tribunal may grant such relief or remedy, or make such order, within its jurisdiction as it considers appropriate where it finds an authority to have acted unlawfully. In some circumstances an award of damages may be made.

1.51 The Act provides that proceedings in respect of a judicial act of a court or tribunal may be brought only by way of appeal, on an application for judicial review or in a forum prescribed by rules. It preserves judicial immunity. Damages may not be awarded in proceedings under the Act in respect of judicial acts otherwise than to compensate a person to the extent required by Article 5(5) of the Convention (compensation for victims of arrest or detention in contravention of that Article).

Implications for tribunals

1.52 The incorporation of the Convention into domestic law will clearly have major implications for tribunals. Hitherto, the Convention has had only a limited impact on tribunals. Convention cases have sometimes resulted in changes to domestic law governing tribunals, but the tribunals themselves have not generally had to take account of the Convention. There are some exceptions to this. For example, it is Government policy that planning inspectors should take the Convention into account. Moreover, tribunals dealing with matters with an EU dimension, such as VAT and duties tribunals, have sometimes addressed Convention issues where these have fed in to the EU jurisprudence in particular areas of the law. But after incorporation, all tribunals will have to take account of relevant Convention jurisprudence and so far as possible to interpret legislation in a way compatible with Convention rights. It will be unlawful for tribunals, as public authorities, to act in a way incompatible with the Convention rights unless they are constrained to do so by domestic legislation.

1.53 Clearly there is a huge task of education and training ahead for those responsible for running tribunal systems. Convention points are liable to be raised in any tribunal at any stage in the proceedings, and tribunals will have to be equipped to deal with them. They will have to learn to distinguish well-founded points from those that are specious, and they will have to familiarise themselves with the way in which Convention issues are addressed in Strasbourg. They will have to learn

a large amount of new case law. They will need to have a constant awareness of Convention principles and general jurisprudence so that adherence is automatic and natural.

1.54 The Judicial Studies Board has already taken a lead in the matter of training. In January 1998 the Board's Tribunals Committee organised a one day seminar on the incorporation of the Convention to which were invited the Presidents and judicial Heads of a large number of tribunals, together with judicial training officers. Our representative on the Committee, Mrs Anderson, attended. A Working Group of the Tribunals Committee has been set up to provide advice, guidance, support and common training materials, available to all tribunals, and to arrange for training to be provided to those tribunals run by the Lord Chancellor's Department that wish to avail themselves of the Board's expertise. We understand that other major tribunal systems, such as the Independent Tribunal Service and the Employment Tribunal Service also have the matter of training in hand. However, there is clearly a great deal more work to be done, particularly in connection with those smaller tribunals to whom the level of resources enjoyed by the larger ones may not be available.

1.55 We understand that the Government intends to bring the Act into force in the year 2000. In the meantime we propose to monitor the availability of training for tribunals. Through our connections with the Tribunals Committee of the Judicial Studies Board we will keep closely in touch with developments, and at the appropriate time we will enquire at local level during tribunal visits whether the necessary training is being received.

Conclusion

1.56 **The incorporation of the European Convention on Human Rights into our domestic law probably represents the single most important challenge facing tribunals in the coming months and years. Every effort must be made to ensure that tribunals are properly equipped to carry out the tasks that the Human Rights legislation will impose.**

PART II: A REVIEW OF 1997/98

2.1 We describe in this Part a selection of other events that have occurred, and further matters on which we have advised during the course of the year.

Administrative Justice International Conference

2.2 We were well represented at the International Conference on Administrative Justice held at Bristol on 26th-28th November 1997, which the Chairman and four of our members attended. The Conference was organised by the University of Bristol Centre for the Study of Administrative Justice in conjunction with the Lord Chancellor's Department, who assisted both in planning the programme and by the provision of financial resources. One of our members, Professor Martin Partington of the University of Bristol, Faculty of Law was the moving spirit behind the Conference. Our Chairman gave a talk on the role of the Council as part of a workshop entitled "Monitoring Developments in Administrative Justice" and acted as chairman of the final plenary session of the Conference.

2.3 The aim of the Conference was to raise the profile of and focus attention on the increasingly large number of fora in which Administrative Justice was practised, such as the Ombudsman movement and the work of a variety of Industry regulators. The objective was given strong support by Geoff Hoon M.P. (then Parliamentary Secretary, now Minister of State, Lord Chancellor's Department) who stressed the importance of developing this area of policy-making.

2.4 In his Address to the final plenary session, Professor Partington expressed the hope that the Bristol Conference would not be a stand-alone exercise. He proposed that some more permanent body be established which could continue to bring together the policy makers, practitioners and academics, in addition to the users of the Administrative Justice system. One possibility was a joint British and Irish Institute for Administrative Justice, which would afford different perspectives on a more or less common jurisdiction. Features might be drawn from the Australian prototype, the Australian Institute for Administrative Law, which had an annual conference on a specific theme and produced a regular newsletter, bringing together information currently widely dispersed in a variety of sources. The institute might also publish conference papers and other research and develop databases, both statistical and bibliographical, which could aid analysis of the Administrative Justice system.

2.5 A Steering Committee was established to take these ideas forward and we look forward to hearing the results of their deliberations in due course. Whatever is proposed may well require initial seed-corn funding, and the Council hopes that the Government (as well as other

potential funders) will be willing to give careful consideration to the support of this important initiative.[1]

Competition Competition Act 1998

2.6 For some years proposals have been emerging for the reform of competition law and for the establishment of a tribunal with jurisdiction in this area. We last referred to this matter in our Annual Report for 1995/96, when we recorded our response to a consultation paper issued by the previous Government. Following the General Election in 1997, the new Government announced that a Competition Bill would be introduced in the autumn. The Bill would differ in some respects from a draft Bill published by the previous administration. As before, the Bill would introduce a prohibition of anti-competitive agreements, cartels and concerted practices (akin to Article 85 of the Treaty of Rome). However, it would also introduce a new prohibition of abuse of a dominant position (akin to Article 86 of the Treaty). The institutional arrangements proposed also differed from those envisaged under the previous administration. The Director General of Fair Trading would, as before, be responsible for enforcing the prohibitions, but appeals from his decisions, instead of going to a separately constituted tribunal, would go to a newly created Competition Commission. This body would have two separate functions: a tribunal to hear appeals against the Director General's decisions under the prohibitions and an investigatory function comprising the existing functions of the Monopolies and Mergers Commission.

2.7 The Department of Trade and Industry consulted us on their proposals, and we later commented on a consultation document containing a draft Bill. We were firmly of the view that the appeals body should be a completely separate entity. We thought that the combination of judicial and investigative functions in a single body, the Competition Commission, could damage the perception of the tribunal as an independent appellate body, notwithstanding that the subject matter of investigations would be very unlikely to impinge on the subject matter of appeals. In commenting on the previous administration's proposals, we had warned against too close a link between the appeal tribunal and the Monopolies and Mergers Commission.

2.8 In responding to our concerns, the Department acknowledged the need to ensure that the appeal tribunal was independent, but emphasised that the Commission would itself be independent of Government. Moreover, the two functions of the Commission would be kept separate. On the appeals side, there would be a President, who would be a senior lawyer appointed by the Secretary of State in consultation with the Lord Chancellor or the Lord Advocate. Both the Commission's Chairman and the President would be on the management board of the Commission.

2.9 Although we adhered to our view that a completely separate appellate body would have been preferable, our concerns were to some extent allayed when we saw the draft Bill. This did indeed distinguish clearly

[1] A volume of revised conference papers under the title "Administrative Justice in the 21st Century" will be published by Hart Publishing, early in 1999.

between the two sides of the Commission. The constitution, jurisdiction and powers of the appeal tribunals were set out on the face of the Bill, as we had urged, and there was provision for our supervision.

2.10 The Bill as introduced contained two changes that we welcomed. There was now a requirement for the Secretary of State to consult the Lord Chancellor or the Lord Advocate, as appropriate, on the appointment of legally qualified tribunal chairmen. In the draft Bill, the requirement for such consultation was confined to the appointment of the President. There was also specific provision requiring the President to arrange for appropriate training of appeal panel members. We had made representations to the Department on both these matters. The Bill also included provision for further appeal on points of law and level of penalty to the courts (Court of Appeal in England and Wales and in Northern Ireland, Court of Session in Scotland), as we wished.

2.11 We look forward to consultation on the tribunal procedural rules in due course.

Constitutional Reform
Devolution

2.12 In last year's Annual Report we briefly mentioned the White Papers on devolution in Scotland and Wales, published in July 1997. This year legislation was brought forward to give effect to the Government's proposals, which had been endorsed by referendums in Scotland and Wales.

Scotland Act 1998

2.13 So far as Scotland is concerned, the detailed arrangements for tribunals north of the Border after devolution are still to be worked out. They are to be implemented by subordinate legislation under the Scotland Act 1998. We gave an indication of our Scottish Committee's preliminary thoughts on the matter in our last Annual Report.

Government of Wales Act 1998

2.14 The Government of Wales Act 1998 establishes the National Assembly for Wales, and makes provision for the functions of Ministers of the Crown in relation to Wales to be transferred to the Assembly by Order in Council. In the first instance, this will include fields such as education and training, health and health services, highways, town and country planning, and transport. The Assembly will have no powers to make primary legislation, but it will be able to make subordinate legislation where powers to do so are transferred to it by Order in Council. This means, for example, that powers to make procedural rules for certain tribunals in Wales, such as agricultural land tribunals, mental health review tribunals, and valuation tribunals, will be exercised by the Assembly instead of by the Secretary of State. The Assembly will also hold inquiries in circumstances where the Secretary of State currently does so, for example in planning appeals and certain other land use matters.

2.15 The Welsh Office made it clear to us that there was no intention of altering or removing any statutory requirements to consult us on procedural rules. However, we were concerned that the Bill as introduced did not make sufficient provision in this regard. The duty under the Tribunals and Inquiries Act 1992 to consult us on procedural rules for tribunals arises in respect of rules made or approved by a

Minister. Similarly, our jurisdiction in relation to inquiries is confined by the 1992 Act to statutory inquiries held by or on behalf of a Minister. The Welsh Office took our concerns on board, and an amendment was made to the Bill during its passage to amend the definition of "Minister" in the 1992 Act to include the National Assembly for Wales. This is now paragraph 33 of Schedule 12 to the Government of Wales Act. We are to be consulted on the draft Order in Council transferring functions to the Assembly.

Freedom of Information: the Government's proposals

2.16 In December 1997 the Government published a White Paper entitled "Your Right to Know: The Government's proposals for a Freedom of Information Act". The purpose of the Freedom of Information Act would be to encourage more open and accountable government by establishing a general statutory right of access to official records and information. The Act would have a much broader scope than the existing central government Code of Practice on Access to Government Information, which we discussed in our Annual Report for 1993/94. For instance, it would apply to all Non-Departmental Public Bodies (NDPBs, or "Quangos"). That would include ourselves. It would also apply to what the White Paper described as the "administrative functions of the courts and tribunals". We took that to be a reference to the administrative functions of the administrative staff of courts and tribunals.

2.17 The White Paper proposed that there should be a presumption of openness. Strict tests would be applied to ensure that information would be released except where disclosure would cause substantial harm to one or more of a limited number of specified "interests" or would be contrary to the public interest. The specified interests covered such matters as national security, law enforcement, personal privacy, commercial confidentiality, public safety, information supplied in confidence, and the integrity of the decision-making and policy advice processes in government.

2.18 Disclosures would be assessed on a "contents basis", with records being disclosed in a partial form with any necessary deletions, rather than being completely withheld. Refusal of disclosure would be subject to a formalised internal review, and there would be provision for appeals to an independent Information Commissioner, who would have responsibility for policing the Act.

Our views

2.19 In general terms we welcomed the proposals. So far as our own position was concerned, we drew attention to arrangements that we had instituted in 1995 whereby the public would have improved access to certain of our records (Annual Report for 1994/95, paras. 2.116-2.121). We believe that greater openness will serve to enhance the public's understanding of our work, and we have no objection in principle to the application of the Freedom of Information legislation to the Council itself. We did however draw the Cabinet Office's attention to the special position of the reports of our members' visits to tribunals and inquiries. We have always treated these visit reports as confidential, and they are not seen by persons outside the Council, except occasionally in edited and anonymised form. This is explained to the tribunals that we

visit, and greatly contributes to the freedom and frankness of the exchange between ourselves and the tribunals. It also enables our members to report freely on what has happened at a hearing held in private or in the course of a tribunal's deliberations where the tribunal retire to consider their decision. We believe that it could impede effective discharge of our statutory functions if the reports of our visiting members were liable to disclosure. We asked for our concerns to be borne in mind when the legislation came to be drafted.

2.20 We considered whether the proposed Information Commissioner should be regarded as a tribunal over which we ought to have supervision. We decided to reserve our position on this, pending further information about how appeals to the Information Commissioner would be conducted. If it is envisaged that the Information Commissioner will hold formal hearings, then we believe there might well be a strong case for our assuming supervisory jurisdiction. In this connection, the implications of Article 6 of the European Convention on Human Rights ("In the determination of his civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law") will need to be carefully considered.

2.21 A draft Freedom of Information Act is to be published for consultation early in 1999. We look forward to further involvement in the preparation of the legislation.

Opening up Quangos: a consultation paper

2.22 Some of the issues raised by the Freedom of Information White Paper overlapped with those in a consultation paper on "Opening up Quangos", published in November 1997. This contained proposals for making NDPBs (including most tribunals, and advisory bodies such as ourselves) more open, accountable and effective. In responding to the consultation paper on our own account, as a statutory advisory body, we drew attention to ways in which we strove to be open and accountable, most importantly through our Annual Reports, which are laid before Parliament. We also mentioned our willingness to act in accordance with the spirit of the Code of Practice on Access to Government Information (by which we are not bound) and the steps we had taken to improve public access to our records.

2.23 The one area where we saw difficulty was in the consultation paper's suggestion that NDPB meetings might be open to the public. Our monthly meetings are largely given over to discussion of policy issues arising from proposals emanating from Government, which are often subject to a confidentiality restriction of some kind. We also discuss the confidential reports of visits by our members to tribunals and inquiries. There is also the consideration that much of our work is quite technical and complex, and would not be readily comprehensible to the public without fairly elaborate explanation. We considered that there might be scope to publicise our meetings in some other way, for example through press releases on particular issues that we think would be of direct interest to the public. In a later paper entitled "Quangos: Opening the Doors" (June 1998) the Government, in setting out its conclusions following the consultation, acknowledged that a balance needed to be

struck on the question of open meetings. The Government consider that NDPBs should hold an Annual Open Meeting where this is practicable and appropriate, and that NDPBs should, where practicable and appropriate, release summary reports of meetings. We shall consider this carefully.

2.24 Turning to the position of tribunals as NDPBs, we emphasised that nothing should be done that might serve to undermine the judicial independence of tribunals. A distinction had to be drawn between judicial and administrative functions and accountability, both at national and local level. Most tribunals do, of course, sit in public, but a few sit in private for good reasons. However, we drew attention to ways in which the workings of tribunals could become more open to the public, for example through Annual Reports and the setting up of local user groups. We thought that tribunals might be encouraged to follow the example of the courts in holding open days, where members of the local community could visit their local tribunal and talk informally to tribunal members and staff about their work. We strongly supported the suggestion that more information should be published about tribunals and their functions.

Data Protection

2.25 The Data Protection Act 1984 gave us supervision over the Data Protection Tribunal, which hears appeals from certain enforcement decisions of the Data Protection Registrar. The 1984 Act also gave us supervision over the Data Protection Registrar in respect of the Registrar's non-executive functions. The Registrar is not a tribunal in the conventional sense, but Parliament in giving us supervision recognised that in respect of some enforcement functions the Registrar must act judicially. We had occasion last year to consider whether our supervision over the Registrar should be continued, and concluded that it should.

Data Protection Act 1998

2.26 The 1984 Act is repealed by the Data Protection Act 1998. The new Act gives effect to the EU Directive 95/46/EC on data protection. It extends data protection controls to cover certain manual, as well as computerised, personal data; attaches conditions to processing, including additional ones for sensitive data; strengthens individuals' rights, in particular to be told about processing, obtain copies of data and secure judicial remedies; and simplifies registration. Reflecting the diminished importance of registration under the new regime, the Registrar is renamed the Data Protection Commissioner. We were consulted by the Home Office on various aspects of the new legislation.

Data Protection Commissioner

2.27 Under the 1984 Act, there was no statutory requirement for the Registrar to give a data user the opportunity to make representations before registration was refused or enforcement action taken. However, under arrangements agreed between us and the first Registrar, and continued under his successor, where problems could not be resolved through informal discussions and negotiations, the Registrar would issue a non-statutory preliminary notice, giving the data user an indication of the action he or she was minded to take. The data user would then have the opportunity to make representations to the Registrar about it. These representations would normally be in writing,

but the data user could ask for an oral hearing, which the Registrar would grant if he or she thought it appropriate.

2.28 In a Home Office paper on "Data Protection: The Government's Proposals", published in July 1997 in anticipation of the new legislation, it was proposed that the procedure for issuing an enforcement notice should ensure that the supervisory authority (i.e. the Commissioner) would explain the suggested remedial action, any necessary immediate enforcement or remedial action, the right to make representations before any action is taken, and the right of appeal. We welcomed this proposal, which derived from the provisions of section 5 of the Deregulation and Contracting Out Act 1995. We suggested that a person against whom it was proposed to issue an enforcement notice should be given the right to make *oral* representations before any action was taken. This would accord with the Deregulation (Model Appeal Provisions) Order 1996. The Home Office said that they would consider the point.

2.29 An early draft of the Bill included a Schedule containing provisions along the lines proposed in the Home Office paper (though without any right to make oral representations). However, the Schedule was subsequently dropped. We were given to understand that under the new Government's better regulation programme the provisions in section 5 of the Deregulation and Contracting Out Act 1995 had fallen from favour as being too inflexible and bureaucratic. In their place, there was to be an enforcement concordat drawn up by the Access Business Group, a partnership between central and local government and business. Under this new voluntary approach to good enforcement, businesses would be given a chance to discuss and remedy problems before enforcement action was taken, unless immediate action was required.

2.30 We were concerned at the removal from the draft Bill of the provisions relating to representations. In particular, we were worried lest it signalled that the Commissioner would no longer be expected to adhere to the procedures agreed between us and the Registrar. However, we were given reassurance on this score. We were told that no change was envisaged to the present practice of serving preliminary notices before taking enforcement action and allowing for representations, though the procedure would not necessarily be appropriate in all circumstances, for example in connection with the new information notices provisions. In the light of this reassurance, we decided to press the matter no further, but we shall be alert to ensure that the enforcement arrangements under the new regime operate fairly.

Data Protection Tribunal

2.31 The Home Office consulted us on a quite separate matter, concerned with the exemption of personal data from the provisions of the data protection legislation on grounds of national security. At a late stage in the Bill's preparation it was decided that, in order to secure compliance with the EU Directive and with the European Convention on Human Rights, there ought to be an appeal from a Minister's certificate that the national security exemption applied. It was proposed that such appeals should be heard by a specially vetted panel of the Data Protection

Tribunal. The Tribunal would deal with appeals on a "judicial review" basis, and there would be no further appeal to the courts (though judicial review would be available). This approach was dictated by national security considerations. It was proposed that only legally qualified members of the Tribunal should sit on appeals in these cases.

2.32 In responding to the Home Office's first thoughts on this matter, we agreed that, in order to avoid unnecessary proliferation of tribunals, it would be appropriate for the Data Protection Tribunal to take on the new jurisdiction. We expressed certain reservations about confining the jurisdiction to legally qualified members of the Tribunal, and about the efficacy of judicial review as a remedy in the context of national security. We also drew attention to certain practical difficulties in our exercising effective supervision over a tribunal operating in the national security field. In the course of the Bill's passage, the Government's thoughts developed further, and amendments were made which confirmed that national security appeals would only be heard by lawyer members, and which excluded our supervision over this aspect of the Tribunal's jurisdiction. However, the Government undertook that we would be consulted on the relevant procedural rules. We were content with that position.

Education
Special Educational Needs Tribunal

2.33 We continue to welcome the way in which the SENT carries out its operations. The Tribunal's work is aided by the structured and compulsory training provided for the chairmen and members of the Tribunal. The chairmen and members are also assisted by the provision of detailed legal guidance, and digests of Tribunal cases and court decisions, compiled by the President, Trevor Aldridge, Q.C.

Clearance rates and workload

2.34 When we reported the research findings of Professor Neville Harris in last year's report, we mentioned that the time taken for an appeal to reach hearing stage was about four and a half months. We noted in the SENT's Annual Report for 1996/97, and the SENT administrators have confirmed recently that the position has held, that the average time is now 3½ - 4 months. This period could not, apparently, be reduced much further without a massive increase in the SENT's permitted allocation of staff numbers. One improvement for the administrative staff has been made during 1998, when the administrative offices were moved into larger accommodation. The new accommodation provides office space for all members of staff whereas, formerly, many had been working in cramped conditions. However, although the Tribunal is in a position to recruit up to its normal level of staffing, there can be problems since the salary scale is not particularly competitive with that on offer elsewhere in London. The officers concerned (administrative officer level) have also to take into consideration the requirement for them to travel out of London for hearings.

2.35 The Tribunal's workload has increased steadily since its establishment in 1994. The work received by the Tribunal for the eight month period to the end of April 1998 totalled 1410 cases. This figure suggests a steady increase in work by comparison with the annual caseloads for previous years: 1994/95 (1161); 1995/96 (1626); and 1996/97 (2051). A high proportion of cases are withdrawn. In 1996/97 nearly 47% of the work received was so classified.

Accommodation

2.36 We mentioned in last year's report that some of the hotel accommodation used for the Tribunal's hearings that we had observed was not suitable. We understand that the Tribunal regard hotel accommodation as having certain advantages over other hearing venues which they might obtain by recourse to the Register of Tribunal Accommodation. For example, hotels offer readily available photocopying facilities, which is essential where late evidence is being proffered in an appeal. The availability of fax machines is also of benefit since it is sometimes helpful to contact a school by this method during the course of a hearing. Furthermore, there are better amenities available for the parties, such as refreshments. However, the Tribunal does not now book extra rooms for use by the parties as conference rooms since little advantage was taken of the facility. The President has informed us that the hotels used regularly by the Tribunal were aware of the Tribunal's requirements.

2.37 However, our concerns about some of the hotel accommodation are shared by the Tribunal. To make its bookings, the Tribunal had been using the Department's agent. The difficulties being encountered were such (for instance the correct allocation of running costs and programme costs) that the Tribunal administrators were keeping the position under review to ensure that the system operated as effectively as possible. We have a wider interest in the development of any trend whereby tribunal hearings are held regularly on hotel premises. Looking ahead, we anticipate that booking agents could be given a pro-forma specification of general requirements needed for a tribunal hearing, including access for people with disabilities. We welcome the initiative within the SENT organisation and will monitor the developments regarding hotel accommodation.

2.38 We had expressed concerns in the past about cases where the parties were not met on their arrival at a hotel. We have been informed that this situation might arise where the clerk is already escorting the first arrivals to the hearing room. The Tribunal staff have indicated that reminders would be issued to the clerks about the need to wear name badges for their easy identification. We suggest that directional signs could also be displayed.

Green Paper - mediation?

2.39 The incidence of special educational needs' provision, and wider knowledge about the Tribunal, has no doubt contributed to the level of appeals work. There are issues raised about whether mediation might help in many of these cases. We have noted cases where discussions between parents and local authorities have been productive on the day of the hearing. We had previously made known our views about mediation to the Department for Education and Employment. We obtained a copy of the Green Paper "Excellence for all children: Meeting Special Educational Needs". When we responded to the Green Paper, we stated our support for mediation. However, we said that if mediation were to be introduced, the arrangements should be time limited since we were anxious about the possibility of delay being introduced into the overall process.

Late evidence 2.40 The Green Paper raised the question whether changes were needed to improve the effectiveness of the Tribunal. In the SENT's Annual Report for 1996/97, the President mentioned the possibility of reassessing the ability of the Tribunal to cope with the demands made of it. The President also mentioned the problems arising in some cases in connection with the rule allowing the introduction of late evidence. We have noted that some chairmen have been uncertain about how to handle the issue of late evidence. We therefore referred to the difficulty both in our responses to the Annual Report and to the Green Paper. We said that we agreed that, unless the circumstances are wholly exceptional, a case should be in order before a hearing commences. The President issued best practice guidance on the matter in March 1998 and, in subsequent communications with us, explained that continuing difficulties arise because of the need to balance the advantage of having access to all relevant evidence, against the administrative problems in receiving it, and copying it to both parties and panel members at the last moment. The intention is that panels who have to adjudicate on admission of late evidence do so in accordance with the principles contained in the regulations. We understand that the Government's response to the Green Paper is to be published in October 1998. We await these proposals with interest, in particular concerning the possible impact on the Tribunal's work.

Employment Employment Rights (Dispute Resolution) Act 1998

2.41 In last year's Annual Report, we recorded that our Chairman had introduced the Employment Rights (Dispute Resolution) Bill, based on a draft Bill published under the previous Government, but with certain significant differences reflecting comments made during consultation and the priorities of the new Government. The Bill received Royal Assent in April 1998. The new Act changes the name of industrial tribunals to "employment tribunals". It makes new provision relating to determinations without a full hearing and chairmen sitting alone. It provides for the appointment of legal officers to undertake interlocutory work in employment tribunals. It provides for independent voluntary arbitration as a binding alternative to a tribunal hearing, under the auspices of the Advisory, Conciliation and Arbitration Service (ACAS). And it includes a variety of other provisions, such as those designed to encourage the use of "in-house" procedures to resolve employment disputes.

2.42 We set out our views on the new provisions in our last Annual Report. In broad terms, we supported them. We expressed the hope that the Bill could be improved during its passage, and that some of our concerns could be addressed in the course of implementation. The Bill underwent two amendments that we particularly welcomed. One was foreshadowed in our last Annual Report: any Order by the Secretary of State to extend ACAS's power to provide an arbitration scheme to issues beyond unfair dismissal will now be subject to the affirmative resolution procedure. The other change concerned the role of legal officers. The Act now makes it clear that legal officers will not be empowered to determine cases (except on agreed terms or where notice of withdrawal has been given) or carry out pre-hearing reviews. Many of the Act's provisions are to be given detailed effect by subordinate legislation, and we look forward to consultation on this in due course.

2.43 As we said last year, we believe that the new Act represents a constructive response to a widely perceived need for changes assisting employment tribunals to cope with the ever increasing volume and complexity of cases and avoid delays, while containing demands on public expenditure. We draw attention below to some of the developments in the course of the year with implications for the workload of employment tribunals.

National Minimum Wage Act 1998

2.44 The National Minimum Wage Act 1998 establishes the legislative framework for setting and enforcing the national minimum wage. The Act provides for a variety of means of enforcement, some of which entail access to employment tribunals. For example, complaints may be made to tribunals concerning an employer's failure to comply with requirements as to the production of records kept for the purposes of the Act. Tribunals will have jurisdiction to deal with claims that persons have been paid less than they are entitled to under the national minimum wage. Employers will be able to appeal to tribunals against enforcement notices and penalty notices issued by enforcement officers. Workers will be able to complain to tribunals of infringements of their rights not to suffer unfair dismissal or other detriment in consequence of their assertion of their rights under the Act.

2.45 We believe that the various provisions providing access to employment tribunals could have a significant impact on the tribunals' workload. We think that there is ample scope for disputes as to the application of the national minimum wage. For instance, the Act is not intended to apply to the genuinely self-employed, but the complexity of the modern labour market could well lead to difficult questions as to whether a person is indeed genuinely self-employed. The Act contemplates that most tribunal cases concerned with the national minimum wage will be heard by chairmen sitting alone, but we are firmly of the view that many cases will warrant a three-person tribunal. We have emphasised to the Department of Trade and Industry the need to ensure that the tribunals receive the necessary resources to handle the new jurisdiction.

Public Interest Disclosure Act 1998

2.46 The Public Interest Disclosure Act 1998 stemmed from a Private Member's Bill enjoying Government and all-party support. It is designed to protect "whistleblowers" in the workplace. It protects individuals who make certain disclosures of information in the public interest, and allows such individuals to bring action in employment tribunals in respect of unfair dismissal or victimisation. We had no particular comments on the substance of the legislation, but we noted that the provisions were quite complicated. With respect to certain disclosures, tribunals will have to take a large number of factors into account. We believe that cases are likely to be complex and that they will be vigorously contested.

2.47 As with the National Minimum Wage Act, we are concerned that employment tribunals should receive the necessary resources to deal with the new jurisdiction. There is not only the additional workload to consider, but also the need for tribunal members to be trained in the provisions of the legislation. We made our concerns known during the passage of the Bill.

"Fairness at Work" - a White Paper

2.48 In May 1998 the Department of Trade and Industry issued a White Paper on "Fairness at Work". A chapter on "New Rights for Individuals" referred to the three new Acts considered above. It then put forward three firm proposals, namely to reduce the qualifying period for protection against unfair dismissal from two years to one year; to abolish the maximum limit on awards for unfair dismissal; and to introduce legislation to index-link limits on statutory awards and payments, subject to a maximum rate. Although it is difficult to be certain on the point, we believe that the first two of these proposals have the potential to increase quite substantially the number of unfair dismissal cases coming before employment tribunals.

2.49 Another of the chapters in the White Paper was concerned with "Collective Rights". This was mostly to do with recognition of trade unions and allied topics not directly affecting our concerns. However, some of the proposals would have an impact on employment tribunals. There will be protection against discrimination for employees who campaign for or against recognition, including special protection for employees who are dismissed simply for asking for recognition. Furthermore, the Government intend to change the law in line with its belief that in general those dismissed for taking part in lawfully organised official industrial action should have the right to complain to a tribunal of unfair dismissal. The White Paper invited views on how such protection should be implemented so as to avoid unnecessary burdens on the tribunal system or ACAS. It suggested among other things the possibility of grouped actions. We agreed that this suggestion was worth examination, and we thought that consideration would need to be given as to how grouped actions might be funded. Finally, the White Paper proposed to make it unlawful to discriminate by omission on grounds of trade union membership, non-membership or activities.

2.50 The White Paper also included a chapter on "Family-friendly Policies". This was mostly concerned with the implementation of certain EC Directives. The Working Time Directive and the Young Workers Directive are to be given effect by Regulations under the European Communities Act 1972. There has been consultation on draft Working Time Regulations. The Regulations will provide for workers to complain to employment tribunals that their rights under the Regulations are being infringed. The consultation paper on the Regulations thought that they could increase the tribunals' workload by an additional 3,000-6,000 cases per year: that is an increased workload of around 3-7 per cent. That could cost between £1.5 and £3 million. The White Paper also referred to the Parental Leave Directive, and proposed that employees should be protected against dismissal or detriment if they exercise their rights to parental leave and time off for urgent family reasons.

Conclusion

2.51 The effect of all this new legislation will undoubtedly be to increase the overall burden on the employment tribunal system. In this short account, we have not attempted to be comprehensive. For instance, we have not so far mentioned the provisions in the Teaching and Higher Education Act 1998 for access to employment tribunals by young employees refused time off by their employer to undertake study or

training for approved qualifications, or refused payment of the hourly rate of remuneration to which they are entitled. It may be that the effect of any particular new legislative provision is hard to quantify, but the cumulative impact of the changes we have outlined above is likely to be considerable. We have warned against underestimating the extent of the additional workload, and have urged that the employment tribunals should receive the resources necessary for them to cope with the work efficiently and expeditiously. We hope that the Employment Rights (Dispute Resolution) Act 1998 will play its part in alleviating the burden.

Enemy Property: Independent Third Party Consultation

2.52 In June 1998, the President of the Board of Trade, the Rt. Hon. Mrs Margaret Beckett, announced that our Chairman had been appointed to provide independent advice to the Government on a procedure for considering claims from individuals in respect of property confiscated by HM Government under the Trading with the Enemy legislation during the Second World War. An initial sum of £2 million had been made available for a scheme to compensate victims of Nazi persecution whose assets in the UK had been confiscated at that time.

2.53 Prior to issuing a consultation paper, our Chairman consulted us on his emerging ideas. Our particular interest lay in the procedures for determining claims. We strongly agreed that there was a need for a tribunal-like body, independent of Government. We also agreed that a three-person panel of assessors would be appropriate, given that difficult questions of eligibility and the amount of compensation were likely to arise. We did not think that a legally qualified chairman was essential, since we thought that legal advice, especially in relation to foreign law, would be available. However, the chairman would need to be a person with good balanced judgment and high standing. We agreed that the panel of assessors should include a person with an understanding of belonging to a minority group.

2.54 So far as the assessors' procedures were concerned, we recognised that the sensitivity of the subject matter and the paucity of evidence militated against too adversarial an approach. We thought that preliminary work in checking the basis of a claim might be done by officials, but that there should be no question of a person being appointed to oppose claims. Rules of evidence should not be applied too strictly. A claimant should normally be entitled to an oral hearing, but where no issues of fact arose or where no hearing was requested the assessors might be able to proceed to a determination without one. Hearings should normally be in public, though a private hearing should be granted if the claimant so wished. We thought that the assessors should give written reasons for their decisions.

2.55 We understood that the aim was to deal with all claims within a fairly short space of time, and that it might not be necessary to put the scheme on a statutory footing. On that basis, we were content that there should be no appeal from the assessors' decisions (though it seemed that judicial review might be available). If it were contended that the assessors had proceeded on an erroneous factual basis, there might be the possibility of their reconsidering the matter.

2.56 If the scheme were to be statutory, we thought it likely that we would wish to seek supervision over the assessors. However, the fact that the scheme might not be statutory would not preclude us from offering advice. We said that we would be happy to give advice at the outset on the assessors' procedures and methodology. We might also visit early oral hearings and offer advice on what we had seen.

2.57 In July 1998 our Chairman issued a consultation paper on a possible claims scheme, entitled "Enemy Property: Independent Third Party Consultation". This took full account of the comments we had made. We look forward to seeing how matters develop.

Immigration
Asylum appeals: monitoring the Rules

2.58 In our Annual Report for 1995/96 we discussed the new Asylum Appeals (Procedure) Rules 1996. The Rules introduced provisions designed to reduce the number of adjournments and to increase the powers of special adjudicators and the Immigration Appeal Tribunal to give directions for the conduct of hearings. We generally supported these provisions, but suggested that there should be special monitoring of their provisions, with a view to ensuring that they struck the right balance and did not lead to injustice. The new Rules also contained provisions widening the circumstances in which cases could be determined without a hearing. We had misgivings about the breadth of these provisions, and again suggested that careful monitoring of their operation would be required. A third aspect of the Rules which we thought should be kept under review was the adequacy of the time limits.

2.59 In the course of the current year, at the instigation of the Lord Chancellor's Department, a monitoring exercise has been conducted on the operation of the new provisions relating to adjournments, directions, and the disposal of cases without an oral hearing. The form of the exercise was agreed between us and the Department. It was designed to elicit from adjudicators and Tribunal chairmen their views on how the provisions were working in practice. They were sent a simple questionnaire, inviting them to say how much use they made of particular provisions, and to comment on the extent to which they found them helpful in disposing of cases fairly and efficiently. There was quite a good response rate of about 40%, and the results were discussed at a special meeting in July attended by the President of the Immigration Appeal Tribunal His Honour Judge Pearl, the Chief Adjudicator His Honour Judge Dunn, Tribunal chairmen and special adjudicators, and Professor Partington, one of our members. The overall impression was that the new provisions were indeed helping the appellate authorities in the efficient disposal of cases and encouraging them to adopt a robustness in the matter of adjournments and case management, without in most cases causing a risk of injustice. However, there were certain areas of concern, particularly in relation to the disposal of cases without a hearing. We shall be examining the results of this exercise carefully, with a view to assessing whether some further modifications to the Rules may be desirable.

2.60 At the close of our reporting period, the Home Office and the Lord Chancellor's Department issued a joint Consultation Paper on a review of the asylum and immigration appeals system, and the Home Office published a White Paper entitled "Fairer, Faster and Firmer - A Modern Approach To Immigration and Asylum". We shall be considering these documents in the coming months, and shall report on them in next year's Annual Report.

Local Government A new ethical framework: consultation paper

2.61 In April 1998, as part of a series of papers on modernising local government, the Department of the Environment, Transport and the Regions issued a consultation paper entitled "Modernising local government: A new ethical framework". The consultation paper stemmed from the Third Report of the Committee on Standards in Public Life (the Nolan Committee). That Report, on Standards of Conduct in Local Government in England, Scotland and Wales, was published in July 1997. It recommended that a new start be made on an ethical framework for local government. The Government consulted widely on the Nolan Report's specific recommendations.

2.62 The proposals in the consultation paper related only to England, but it was envisaged that broadly similar approaches would be taken in Scotland and Wales. Our Scottish Committee have been consulted on the Scottish proposals.

2.63 The consultation paper proposed that every council should be required by law to introduce its own code of conduct for councillors, based on a national model. All councillors would be bound to observe the code. Our interest was in the proposed enforcement and disciplinary arrangements.

2.64 The Nolan Report had recommended the establishment by each council of a Standards Committee, composed of senior councillors, to examine allegations of misconduct by councillors and to recommend disciplinary action to the full council. Appeals would lie to new Local Government Tribunals against disciplinary action by councils against a councillor. The Tribunals would have power to require a council to alter its code of conduct, standing orders, and other procedures when necessary. They would also have power to disqualify councillors from office. These recommendations were not universally supported. Many commentators saw weakness in a disciplinary system which did not contain any independent input, external to the council, until the appeal stage. There was also criticism of the proposed role of Local Government Tribunals, particularly in relation to the alteration of a council's code and procedures.

2.65 The consultation paper came forward with modified proposals. Councils would still be required to establish Standards Committees to maintain and enforce high standards of conduct in councils. However, there would be a new independent body, the Standards Board, whose task would be to handle all substantive allegations that councillors had failed to observe their council's code. A council's monitoring officer (who has a statutory duty under the Local Government and Housing Act 1989 to report to the council any proposal, decision or omission of

theirs giving rise to a contravention of law or statutory code of practice or to maladministration or injustice) would be responsible for referring allegations of code breaches, other than those of a trivial or technical nature, to the Standards Board. The Standards Board would have regional panels, responsible for appointing an investigator to investigate and report to them on an allegation, determining its substance, and imposing an appropriate penalty on the councillor concerned if the allegation was upheld. Appeal would lie to a national panel of the Standards Board. The Standards Board might also have a role in issuing guidance and information about best practice and in providing training. Detailed proposals were put forward on the constitution of the Standards Board and its powers and procedures. The person against whom an allegation had been made would be able to make written or oral representations to the regional panel hearing the allegation, and to challenge the findings of the investigator, if necessary through oral cross-examination. Subject to the possibility of cross-examination, it was envisaged that the regional panel would so far as possible adopt investigative and non-adversarial processes.

Our views

2.66 We thought that if the proposals were to go ahead in something like the form put forward then the Standards Board, both at regional and national level, should be brought under our supervision as a tribunal. We considered that the proposals were likely to give rise to difficult questions of constitution and procedure, on which we would wish to offer advice. We thought that the Standards Board would be operating in a field involving a high degree of public interest, and that supervision by us would greatly enhance the public perception of the fairness of the Board's procedures.

2.67 We offered a number of detailed comments on issues as to the various ways in which allegations might reach the Standards Board. We drew attention to the impact that other regimes, such as the audit regime, the local ombudsman and the criminal law, might have on the working of the Standards Board. We emphasised that there should be absolute clarity about the point when the Standards Board became seised of an allegation. We thought that there would inevitably be cases where the Standards Board would need to initiate proceedings itself. We expressed concern about giving a council's monitoring officer, as an employee of the local authority, a role in referring allegations to the Standards Board. We commented on the way in which preliminary screening of allegations might be undertaken.

2.68 With regard to the handling of allegations by the Standards Board, we expressed some misgivings about the combination of investigative and adjudicative functions in a single body, even though it was envisaged that the Standards Board would not itself carry out investigations, but would appoint an appropriately qualified person or persons to do so. We also had doubts about an adjudicative body having an advisory or training role. As regards procedures, we thought that Article 6 of the European Convention on Human Rights might inevitably lead the Standards Board to adopt a more adversarial process than the one envisaged.

2.69 Our final set of comments concerned the proposed two-tier system whereby appeals from regional panels of the Standards Board would go to a national panel of the Board. We thought that the appeal body should be completely separate from the first-instance body; otherwise, the public and the persons directly concerned would not have confidence in the appeal body's independence. We thought that the appeal body should be chaired by a judge or other senior lawyer, possibly appointed by the Lord Chancellor, and should have a distinguished independent membership. We thought that a highly qualified appeal body would be necessary, for example, in cases involving the interim suspension of a councillor facing serious allegations of misconduct. We think that a power of interim suspension which would deprive electors of representation should be exercised very sparingly and only after the most careful judicial scrutiny.

2.70 At the close of our reporting period, the Government published a White Paper entitled "Modern Local Government: In Touch with the People" (July 1998). This took account of comments received in the course of consultation, including our own. We were pleased to note that the White Paper referred specifically to the Government's intention of discussing with us whether the appeal body would take the form of a Tribunal or a national panel of the Standards Board. We look forward to further consideration of this issue.

Reasons for planning decisions

2.71 The consultation paper on "Modernising local government: A new ethical framework" also contained the Government's preliminary response to the Nolan Committee's recommendations on the planning system. For the most part, the issues raised were on the fringes of our remit, or were to be the subject of separate consultation exercises. The one issue on which we commented concerned the giving of reasons by local planning authorities. The Nolan Committee recommended that the reasons given by planning committees for refusing or granting an application should be fully minuted, especially where they were contrary to officer advice or the local plan. Under the General Development Procedure Order 1995, reasons are only required where applications are refused or granted subject to conditions.

2.72 The Government agreed that it was good practice for planning committee meetings to be properly minuted. In particular, where elected members decide to grant permission against the officers' written recommendation, the minutes should record their reasons for doing so. However, the Government's view remained that there should not be any general requirement for reasons to be given for granting planning permission since such decisions were not subject to any appeal process. A requirement to give reasons for granting permission would not only make planning committees' work more difficult but would put permissions at increased risk of legal challenge on purely technical grounds.

2.73 We felt that the Government's response to the Nolan recommendation did not really address the thrust of what the Nolan Committee were concerned about. In particular, we regarded the question of whether or not the General Development Procedure Order should be amended as

being a peripheral issue. As we see it, the Nolan Committee were not primarily concerned with the position of the applicant for permission or other interested parties. They were concerned with the integrity of the decision-making process. An applicant for permission does not of course require reasons to be given for the unconditional grant of permission, nor can there be any appeal from such a grant. Moreover, we would agree that there is no need for reasons to be minuted where permission is granted for an uncontroversial development (for example, one which is in accordance with the local plan, which has not given rise to objections, and which has been the subject of a favourable recommendation by the planning officer). However, we consider that, as a matter of good administrative practice, where conflicting considerations have been brought to the notice of the local planning authority and the authority decides to grant permission, they should put themselves in a position to give reasons for that decision. This would be in the interests of good administration and of accountability. Additionally, there is the consideration that the grant of permission could establish a precedent, both at local planning authority level and on appeal. It could create difficulties for an inspector hearing an appeal against a refusal of permission if no reasons had been given by the authority for the grant of permission in an earlier, similar, case.

2.74 The White Paper on "Modern Local Government: In Touch with the People" returned to this issue. It said that the Government had given further consideration to the suggestion that councils should in all cases explain in writing why planning permission had been granted, in contrast to the legal requirement only to give reasons when planning permission was refused, and was taking steps so that when significant development proposals were granted permission, the reasons for those decisions were transparent and publicly recorded. We welcome this initiative, and trust that our earlier observations will be taken into account in implementing it.

Local Taxation
Valuation Tribunals: Financial Management and Policy Review

2.75 In our last Annual Report, we mentioned that the Department of the Environment (as it then was) had embarked on a Financial Management and Policy Review of the Valuation Tribunal Service in England. We welcomed the opportunity to contribute to this exercise, and our Secretariat had useful meetings with departmental officials to discuss emerging proposals for improving the structure and administration of valuation tribunals. It was during the course of the Review that we published our special report **Tribunals: their Organisation and Independence**[1] , and the principles that we sought to expound in that Report formed part of the background to the discussions that took place.

2.76 In September 1997, the Department of the Environment, Transport and the Regions (as it had by then become) issued a consultation paper setting out options which might be considered for inclusion in a report to Ministers on the future of the Valuation Tribunal Service and on the valuation appeals process. In responding to the consultation paper, we welcomed the emphasis that had been given to our report **Tribunals: their Organisation and Independence**, and said that we would be

[1] Cm 3744

interested to see how the principles outlined in that report would be taken into account when final decisions came to be made. We emphasised the judicial nature of the tasks that valuation tribunals had to perform, and urged that changes should be introduced in a way that did not undermine the independence of the tribunals' judicial functions. We noted that some of the more radical options canvassed in the consultation paper, such as a merger of the valuation tribunals with other tribunal systems, were not to be pursued in the immediate future, and were content that such matters should be kept for more detailed consideration at a later stage.

Central Valuation Tribunal

2.77 We agreed with the suggestion in the consultation paper that certain specialist and complex non-domestic rating cases were not really suitable for handling by a local valuation tribunal, and that alternative arrangements should be made for dealing with them. We supported the idea of establishing a Central Valuation Tribunal for that purpose, and offered ideas as to how this might fit in with the existing structure of local valuation tribunals and the Lands Tribunal (which hears appeals from valuation tribunals in non-domestic rating cases). We thought that the Central Valuation Tribunal should include local membership and should be able to sit locally. We considered that the Tribunal when sitting to hear a case should have a legally qualified chairman and two suitably qualified and experienced wing members, drawn from a panel comprised predominantly of existing valuation tribunal members. We thought that members of the Central Valuation Tribunal should receive appropriate remuneration.

2.78 In a later round of consultation, we reiterated our views on these matters, and offered further comment on the role of the President of the Central Valuation Tribunal. We thought that the President should be responsible for preparing the lists from which Tribunal members should be drawn, and for the selection of members. We thought that he should have a similar role in respect of the appointment of assessors, though given the level of expertise that should be expected of members we felt that assessors should be used rarely. In view of the President's important responsibilities, we considered that the President should be a Ministerial appointment, should receive appropriate remuneration, and would benefit from being a lawyer. We look forward to seeing how proposals for a Central Valuation Tribunal develop.

Recruitment, selection, appointment and training of members

2.79 The consultation paper put forward a range of ideas for improving the recruitment, selection, appointment and training of valuation tribunal members. The proposals were aimed at improving the quality of tribunal membership and ensuring continuity and experience among members. They included such matters as a nationally co-ordinated advertising and recruitment campaign; an appointments panel to approve applicants for appointment; prior undertakings by approved applicants as to availability for hearings and for training; and a probationary period before confirmation of appointment. Certain changes were proposed in relation to the termination and continuation of appointments. There were various suggestions for making training for members, chairmen and presidents more systematic and focused, and for improved guidance on their respective roles. We warmly

supported this part of the consultation paper, and were pleased to learn that Ministers are intending to take these proposals forward in broadly the way suggested, while having regard to the need not to deter people from applying for membership.

Structure of administrative support

2.80 The consultation paper favoured a new administrative structure for the Valuation Tribunal Service, leading to a further reduction in the number of administrative units over the next five years. Our concern here was that the restructuring should not hamper the effective working of the local tribunals and the public's access to them. We were pleased to note that there would be full consultation with the tribunals themselves on the proposed changes.

Procedures

2.81 At present, if a ratepayer wishes to challenge an entry on the valuation list, he must first make a "proposal" to the valuation officer. If the ratepayer and the valuation officer cannot resolve the matter, the valuation officer must, within six months of the proposal, refer the disagreement "as an appeal by the proposer" to a valuation tribunal. In practice, disagreements are frequently forwarded to the tribunal as appeals without proper consideration having been given to them at the proposal stage. Many cases are then settled or withdrawn before reaching a hearing. We have long regarded this process as wasteful of the tribunal's administrative resources.

2.82 The consultation paper made a number of suggestions for improving procedures, with the overall aim of instilling best practice and drawing a clearer distinction between proposals and appeals. In relation to the proposal stage, we fully supported suggestions aimed at encouraging efficient timetabling, the early registration of proposals and the exchange of accurate information. We strongly endorsed the aim of ensuring that proposals were properly considered before being forwarded to the tribunal.

2.83 So far as appeal procedures were concerned, we agreed that the onus should in future be on the ratepayer to launch the appeal. In our view, this would serve among other things to enhance the independent standing of the tribunal. We also supported other suggestions designed to encourage early appeals and timely submission of written evidence, while reserving our position on some of the detail. We suggested that better use might be made of pre-hearing reviews. We agreed on the need for firmness on the part of tribunals with regard to adjournments and postponements, but thought that this was probably better dealt with by training rather than by changes to the procedural rules. We supported the suggestion that the tribunal clerk should have power to register an agreement where the parties have agreed a valuation but not completed the necessary documentation. This should help avoid the wasteful practice of tribunals themselves "rubber-stamping" a large number of settled cases. Finally, we welcomed and supported various ideas put forward for helping unrepresented appellants.

Central direction

2.84 As mentioned above, the consultation paper referred to our report **Tribunals: their Organisation and Independence**, in which we emphasised the importance of some form of central direction within each tribunal system. The consultation paper suggested that the President of the Central Valuation Tribunal might be given a role in this regard. It floated the possibility that the President might be asked to act as an inspector of the quality of the judicial service offered by valuation tribunals and to report to the Secretary of State on matters such as the adequacy of procedures, recruitment arrangements and training. The President might also be asked to oversee the administration of central services provided to valuation tribunals, including training, guidance on good practice, and dissemination of important decisions.

2.85 This aspect of the consultation paper was criticised by many respondents, who evidently felt that the combination of different functions in the President of the Central Valuation Tribunal would be inappropriate. In a later round of consultation, it was proposed that the President should not be responsible either for a national Valuation Tribunal office, or for monitoring and reporting on the judicial performance of other valuation tribunals. Instead, it was proposed that a national Valuation Tribunal unit should be established, reporting to a committee chaired by the National President of the National Association of Valuation Tribunals (a non-statutory body) and including members of the Society of Clerks and a representative of the Department, to co-ordinate and organise national functions. It was also proposed that there should be a periodic assessment of the judicial performance of the valuation tribunal system, and that this assessment should be carried out perhaps every third to fifth year by someone appointed for the purpose who was independent both of the Valuation Tribunal Service and of the Department.

2.86 We adhere to the view we expressed in response to the consultation paper, namely that it is vitally important that the Valuation Tribunal Service should be provided with strong central direction. We doubt whether the national Valuation Tribunal unit and supervisory committee in the form proposed would be in a position to provide the Valuation Tribunal Service with the strong leadership that we believe is needed. We also think that the judicial monitoring function fits squarely within the ambit of a judicial head or president of a tribunal system. We think that this function would be better exercised from within the valuation tribunal system itself, and on a more regular basis than the one suggested. If there is to be a national Valuation Tribunal unit and supervisory committee, then we think that the monitoring of judicial performance should form a part of their business, and that they should be asked at the outset to consider ways of implementing our special report. Our view remains that if the appointment of a fully empowered national President is not thought to be appropriate at present it is for the Department to show that the principles outlined in our special report are to be applied by other means.

Mental Health Review Tribunals

2.87 We have expressed our concern in our last two Annual Reports about the pressures on resources available to the Mental Health Review Tribunal Secretariat, following the publication of the Paterson Report which examined the administration and funding of the MHRT Secretariat. We welcomed the appointment of Mrs Zena Muth to the newly-created post of Head of the Mental Health Review Tribunal Secretariat in April 1997. We recognised that a key task in her first year would be to make as much progress as possible in improving the performance of the Service.

Funding and staffing of the MHRT Secretariat

2.88 Since the information we gained from our visits during the first part of the reporting year was not altogether encouraging, we were grateful for the opportunity in January 1998 to discuss with Mrs Muth the progress that she had made in tackling the difficulties which continued to beset the working of the Secretariat. She was able to tell us of the action she was taking to secure improvements. We noted that there had been no increase in the budgetary provision for MHRTs since the Paterson Report was published and we enquired whether administrative action alone was likely to secure improvements in the administrative support given to MHRTs and to bring about a reduction in delays. Mrs Muth accepted that the likelihood was that the Secretariat would require more staff, but drew attention to the proposal to introduce a computerised booking system (Lotus Notes) within the four regional offices which could relieve staff of much of the manual work currently involved in processing cases and setting up tribunal hearings. We also mentioned our continuing concern about the number of tribunal hearings where a clerk was not present. Mrs Muth said that she regarded it as essential that a hearing clerk should be present to assist every tribunal. We were told of the plan to re-deploy typists following computerisation as booking clerks, thus freeing some booking clerks to be trained as hearing clerks.

2.89 The Lotus Notes system was introduced into all four regional offices in April 1998. Despite some teething troubles, the system is now up and running and is likely to have a beneficial impact on the administration of the Secretariat. The re-deployment of typists has started in three of the regional offices. Statistics provided by Mrs Muth for the first six months of 1998 showed that only some 2.5% of hearings during that period had lacked a clerk. Some booking clerks had already been assigned as hearing clerks, but more remained to be done.

Delays

2.90 We asked Mrs Muth in January what progress was being made to reduce hearing delays. She admitted that the existing delays were not acceptable. Improvements had been made as regards unrestricted cases, but restricted cases still presented difficulties, particularly in some of the special hospitals where there were insufficient numbers of consultant psychiatrists. There had also been a large upsurge in applications under section 2 of the Mental Health Act 1983 and the statutory requirement for these cases to be heard within seven days further added to the pressures. Mrs Muth pointed out that a new system had been introduced at the beginning of the year whereby cases would be listed for hearing on receipt of the patient's application. The forward booking of hearings in this way made it important that psychiatrists

should submit their reports within the time limit provided for in the Rules. The aim of the new arrangements was to alleviate the effects of a large drop-out rate of cases before the hearing date, owing to requests for adjournments and the discharge of patients. We understand that the new system has met with a degree of success, but difficulties continue in obtaining reports within the required period.

2.91 We were impressed by the determined way in which Mrs Muth set about making the best use of the limited resources available to the Secretariat. It was with some disappointment, therefore, that we learned of her departure in September 1998 to take up a new post elsewhere. We very much hope that Mrs Muth's successor will be able to build on the work which has been done during the past year, and that the continuing pressure on administrative staff can soon be lifted. **We intend to continue to monitor closely the working of the MHRT Service in the coming year, and will be looking for a commitment from the Department of Health to ensure that the MHRT Secretariat is properly funded and resourced. Our anxieties about this tribunal system remain, and we hope that the Department will focus its attention on the development of a clear strategy for tackling the problems within the MHRT Service which, in our view, have existed for far too long.**

Reduction in number of MHRT Regions

2.92 We noted the decision taken by the Secretary of State for Health in April that the number of MHRT regions in England should be reduced from eight to four. This entailed a corresponding reduction in the number of Regional Chairmen. We felt that the alignment of each of the four existing regional offices with one Mental Health Review Tribunal and a single Regional Chairman might help to reduce the differences in practice which had grown up in the different regions; it was a welcome step in the direction of the establishment of a presidential system of organisation for MHRTs which we have long favoured. These new arrangements came into effect on 1st August 1998. We understand that it is the intention of both the Department of Health and the Lord Chancellor's Department to proceed to the introduction of a presidential system, when a suitable legislative opportunity arises.

2.93 Two out of the four new Regional Chairman posts have now been filled. We understand that the remaining two posts are to be re-advertised with the expectation that they will be filled by April 1999. In the meantime, the two regions are being run in a caretaker capacity by existing Regional Chairmen who have agreed to stay on for the purpose.

Mental Health Act Review

2.94 At the end of our reporting period, the Government announced that it was setting up a Review of the Mental Health Act 1983. One of the aims of the Review is to ensure that a proper balance is achieved between individual rights and the requirements of the safety of both the individual and the wider community. In the first instance, the Secretary of State is to appoint a small team of experts to advise him on areas of current legislation which need to be revised or supplemented. We hope that the opportunity will be taken, when legislation is prepared, to abolish Managers' Reviews; these we continue to regard, in common

with other commentators, as a source of confusion to patients and as an unnecessary duplication of effort.

National Health Service Family Health Services Appeal Authority

2.95 In July 1998, we were pleased to meet Mr David Laverick, the Chief Executive of the Family Health Service Appeal Authority (FHSAA). We have maintained our interest in the operations of the FHSAA since the changes in April 1996, when patients' complaints were separated from disciplinary issues to be dealt with locally (usually within practice-based procedures). Decisions made by Health Authorities, following investigation and hearing by a Discipline Committee, whether a primary healthcare practitioner has been in breach of terms of service, can be appealed, by the practitioner only, to the Secretary of State. The FHSAA acts on behalf of the Secretary of State and, in respect of all disciplinary questions, sets up an oral hearing panel to inquire into the appeal. The panel makes a report with a recommendation to the Chief Executive, who makes the final decision on the appeal.

Jurisdiction

2.96 One question which has arisen since April 1996 and following consideration by the FHSAA of our special report **Tribunals: their Organisation and Independence**[1] is whether our jurisdiction might be widened to include the other work dealt with by the FHSAA. The FHSAA would welcome our involvement in all their decision-making processes, particularly since the Health Service Commissioner's remit does not extend to this area. A large percentage of FHSAA appeals work concerns the regulation of pharmacists in England with which, at present, we are not concerned. We are interested in examining the extent of our relationship with the FHSAA, although any formal change would require legislation. The question remains for further discussion with the Department of Health.

Workload

2.97 Since the implementation of the April 1996 regulations, although there has been a backlog of appeals arising from earlier service committee decisions on patients' complaints, the work of the FHSAA on disciplinary questions has diminished. We understand that the disciplinary appeals which are coming to the FHSAA are mainly those which have been initiated as a result of representations made to a Health Authority by the Dental Practice Board. Although the patient has been taken out of the equation so far as the disciplinary regulations are concerned, the Dental Practice Board continues to raise issues on which they seek disciplinary action from the Health Authority concerned. We have ourselves noted this trend, even though the number of disciplinary appeal hearings that we have been able to observe has been fairly low.

Consequences of the 1996 changes

2.98 Mr Laverick described to us how the FHSAA had been restructured since the implementation of the April 1996 regulations. This has resulted in a reduction in staffing levels. The administrative staff, the chairmen and panel members have all been involved in training initiatives. All panel members are now trained on a three-yearly cycle and close monitoring of the chairman and members of the oral hearing

[1] Cm 3744

panels is undertaken. Apart from observing the operation of the panel itself, the monitor also reports back to the FHSAA whether the brief which is provided to the panel, which is a digest of the written material available in the appeal, is adequate. In accordance with their intention to be fair, open and honest, the FHSAA provide a copy of the brief to the parties involved in the appeal. Furthermore, the report made to the Chief Executive by the oral hearing panel, with its recommendations, is published as an appendix to his eventual report. Formerly, the panel's report was kept private, even though the Chief Executive might be assisted by further input of medical advice which was not available at the inquiry. Now, however, if additional advice is taken before the Chief Executive reaches his decision, the parties are given the opportunity to comment on that additional evidence.

2.99 Mr Laverick pointed out that one of the consequences of the 1996 changes is that there was inserted into the amending regulations, possibly by error, a requirement that the FHSAA hold an oral hearing on almost every disciplinary appeal. This applies even where the practitioner concerned does not want an oral hearing and even where the issues do not require the expertise of medical members. The overall oral hearing process is naturally expensive, even more so if a hearing is not, strictly speaking, necessary. One other consequence of the amending regulations is that the home Health Authority (that is the Authority to whom the practitioner concerned is contracted) does not have an appeal right in respect of the investigation carried out by a different Health Authority's Discipline Committee. Even if there are clear deficiencies in the method of investigation, or the report of the appeal, the home Health Authority is not in a position to take the matter to the FHSAA.

2.100 Another issue which Mr Laverick discussed with us relates to the composition of the oral hearing panels that are involved with the pharmacy work, over which, as we indicate above, we do not have jurisdiction. Mr Laverick intends to pilot a scheme in which the current panels of five people are reduced to three and include a legal chairman, a pharmacist with retail experience, and one other person. Mr Laverick has also made similar changes in the system of appeals concerned with whether the provision of additional pharmaceutical services in a rural area will prejudice the provision of general medical services or pharmaceutical services. This again has reduced from five to three the number sitting on the oral hearing panel, with a consequential reduction from an average of three days to one day in the time taken to deal with the inquiry.

2.101 Clearly, the work carried out by the FHSAA is such that consideration could be given to bringing the FHSAA within our supervision when carrying out all its adjudicative functions. We hope to report further on the issue next year.

Road Traffic (NHS Charges) Bill

2.102 We had discussions with the Department of Health about a proposed new scheme for the recoupment of the cost of treating road accident victims where the victim obtained third-party compensation. The intention is that there will be a route of appeal, against National Health

Service charges raised for treatment in English and Welsh hospitals, to the Medical Appeal Tribunals, one of the tribunal jurisdictions which falls currently within the Independent Tribunal Service. The new appeal arrangements will mirror those for recovering compensation against benefit payments. We welcomed the early notification of the intended provisions on which we were able to offer our advice. We understand that this legislation is likely to be introduced during the next Parliamentary session.

National Lottery
National Lottery Act 1998

2.103 The White Paper "The People's Lottery", published in July 1997, included a proposal to give the Director General of the National Lottery power to impose a financial penalty on the holder of a licence to run the National Lottery in the event of a breach of a condition of its licence.

2.104 The National Lottery etc. Act 1993 placed the Director General of the National Lottery under our supervision in respect of his functions concerned with the revocation of licences. In the course of preparing the legislation to give effect to "The People's Lottery", the Department for Culture, Media and Sport proposed to us that our supervision should be extended to cover the Director General's functions concerned with the imposition of financial penalties. We readily agreed to this proposal. We were also in agreement with the Department on matters of procedure, including the need for a specific requirement on the Director General to give reasons for his decisions. So far as appeals from the Director General's decisions were concerned, we agreed that there should be an appeal to the courts, as opposed to the Secretary of State. We also agreed that the existing appeal to the Secretary of State in revocation cases should be replaced by an appeal to the courts. The Bill as introduced provided for all these matters.

2.105 We took the opportunity of raising again with the Department a point which we had urged unsuccessfully at the time of the 1993 legislation, namely that the imposition of conditions attaching to a licence, or variation of those conditions, should be subject to appeal procedures similar to those applying in revocation cases; and that we should have supervision over that aspect of the Director General's functions. We pointed out that the variation of conditions without the licence holder's agreement could be a more severe sanction than the imposition of a financial penalty, and should be subject to appropriate safeguards. The Department agreed to reconsider the matter, but in the event no amendments were made to the Bill in this respect.

2.106 In the course of the Bill's passage, the Secretary of State announced that the Bill would be amended to replace the Director General by a five-member National Lottery Commission. The change was aimed at enhancing public confidence in the regulation of the lottery. The new Commission would take over the Director General's functions, including those relating to the revocation of licences and the imposition of financial penalties. The new Act so provides. Our supervisory role is unaffected, except that we will now have supervision over the Commission instead of the Director General.

Pensions Appeal Tribunals

2.107 As we approached the end of our reporting year we bade farewell to Mr Richard Holt, President of the Pensions Appeal Tribunals (England and Wales) who retired from office in July 1998. Mr Holt's appointment was on a part-time basis for 85 working days per year, with extra days being paid on a daily basis. During Mr Holt's tenure the workload of the Tribunals trebled, contributing to some of the difficulties to which we have referred in recent Annual Reports, primarily the delay which occurs before appeals are listed for hearing. By the time Mr Holt retired, the Tribunals had substantially reduced their outstanding cases from a peak of 11,898 in December 1996 to 8,869 at the end of July 1998. However, the average waiting time for a hearing continued to be high and, in July 1998, was 46 weeks. This followed a period during which many of the pre-1997 appeals were cleared. We hope that the measures described in the following paragraphs will lead to further improvement. We also look forward to meeting Dr Harcourt Concannon, appointed as full-time President of the Tribunals from 10th August 1998.

Improvements *War Pensions Agency*

2.108 Decisions made by the War Pensions Agency since April 1998 now include fuller reasons for the decision taken on a war pension claim. The intention is that, with a better explanation of the decision, a claimant can make an informed judgement on whether to proceed with any appeal. The War Pensions Agency have also introduced a more streamlined version of the Statement of Case. This document is prepared for each appeal, and sets out the summary of the appellant's service history, medical history and the law on issues relating to the appeal.

Tribunals

2.109 One of the features of procedural rule changes that were made in early 1998 is a provision taken from our special report **Model Rules of Procedure for Tribunals**[1], which will enable a Tribunal more easily to proceed with a hearing in the absence of the appellant. An additional safeguard allows for the reinstatement of an appeal in certain circumstances. Another rule change will enable the Tribunal chairman to remit cases to the War Pensions Agency for further information or order a medical report. Together the rule changes should reduce the level of adjournments.

2.110 The Tribunals have recently had installed a new computer system which will provide detailed information on the appeals workload, and cases heard and adjourned. We hope that the new computer system will offer many benefits for the appeal process. The target for numbers of hearings listed each day is seven entitlement and nine assessment hearings (excluding Mondays and Friday afternoons in the regions). The Tribunals work closely with the service representative organisations, mainly the Royal British Legion and the Royal Air Forces Association, aiming wherever possible to list cases in such a way that the representative organisations can make best use of their personnel present on the day of the hearing.

[1] Cm 1434

2.111 The Tribunals have had some problems finding suitable accommodation for hearings. This is not always easy because, for hearings of assessment appeals, the Tribunals require a medical examination room with hot and cold water. Outside London, the Tribunals often resort to the use of local courtrooms. We have had concerns for some time about the suitability and availability of hearing venues. We were pleased to hear from the Court Service that from August 1998 a long-standing problem over assessment hearings in South Wales should soon be overcome.

2.112 Tribunal training continues to take place including special training arrangements for newly-appointed legal chairmen, and attendance on a weekend of training held each year for all chairmen and members. We also understand that the Tribunals held a very successful day course for legal chairmen to discuss procedural and legal issues and it is anticipated that this will be repeated at regular intervals. A day course for service members as a group and also for legal and medical members will be repeated as and when the need arises.

A pilot scheme

Background

2.113 We mentioned in our Annual Report 1996/97 that a pilot scheme was proposed to see whether, by providing means for appellants to meet their representatives at an earlier stage before the actual appeal, in some cases there might be a realistic recognition that the appeal is unlikely to succeed. Discussions about a pilot scheme took place in September 1997 between the service organisations and representatives from the Court Service and the Tribunals. We understand that the plan was for the Tribunals' main involvement in the scheme to be limited to providing a printout of the cases in the category relevant to the scheme for the use of the organisations in contacting appellants direct. Using the Leeds region as a base, 50 cases were to be selected, concentrating on assessment appeals. Leeds had been identified due to the particularly heavy backlog in the area and the preponderance of noise induced hearing loss assessment appeal cases. The only other involvement with the scheme by the Tribunals was to be of an administrative nature in providing the venue for the meeting and a clerk to administer the payment of an appellant's expenses by the Tribunals.

2.114 It was envisaged that the implementation of the scheme might result in the withdrawal of appeals made on unrealistic grounds. The removal of such appeals would reduce the waiting time for other appellants' cases and release tribunal time for appeals with stronger grounds. Likewise, for the appellants involved with the scheme, with the advantage of advice and being able to reach an earlier decision on whether to continue with an appeal, they too would benefit in not having to wait some six to nine months for the hearing, only to be informed, if this was the case, that their condition did not meet the criteria for a higher assessment. Sadly, however, a subsequent breakdown in communications led to the position where, as we report below, the pilot scheme has not been taken forward.

2.115 In last year's Annual Report we said that one of the amending Rules was intended to provide for appellants' expenses to be paid in appropriate cases. We understand that Mr Holt had suggested that such

a provision be made. We were subsequently informed by the Lord Chancellor's Department that the provision for the payment of expenses was to be dropped. We were not clear whether, nonetheless, the pilot scheme would still take place. It became apparent to us during the spring of 1998 that there was either a misunderstanding or an impasse between the Court Service and the service organisations on the question of the pilot scheme. We therefore ourselves pursued the question further through meetings that our Chairman held during the summer with senior representatives of the Royal British Legion and the Royal Air Forces Association.

Discussions with representative organisations

2.116 In discussions with our Chairman the service organisations' representatives made clear their continuing willingness to take part in a pilot scheme. The Royal British Legion remained in a position to take part in a scheme limited to appellants whose hearings were to be listed in the Leeds region. The Royal Air Forces Association, which deal with far fewer appeals than the Royal British Legion, indicated their willingness to take part in a scheme preferably where the appellants' appeals would be heard at a Tribunal venue in the South East of England. Both representative organisations, being charitable bodies, made very clear that their prime responsibility was to the pensioners who had sought their help. Although in offering advice the organisation might have to point to the futility, in some cases, of the grounds of appeal, nevertheless many appellants might still choose to proceed with a hearing as they had every right to do. In such cases the representative organisations would continue to act and present the appellant's case when the hearing was listed. Indeed, it was clear that both organisations work closely with the representatives of the War Pensions Agency at Tribunal venues and often assist an appellant who might otherwise have attended a hearing in person without representation.

Decision not to proceed

2.117 We communicated the result of the discussions between our Chairman and the service representative organisations to the Court Service. It was accepted that there had been a breakdown in communications and further discussions took place involving the Court Service and the Royal British Legion. In September 1998 we were informed that the result of these discussions was agreement that the improvement in waiting times, particularly in hearing loss cases, had been such that the potential benefits of the scheme had been significantly reduced. The scheme would have involved extra expense for both the Royal British Legion and the Court Service and their joint assessment was that in view of all the changes since 1997 the benefits they sought were unlikely to be realised. Agreement was reached not to go ahead; the Court Service considered that it would not be worth pursuing a scheme which solely involved the Royal Air Forces Association. Moreover, the service organisations, as charitable bodies, are not themselves in a position to pay travelling expenses to enable appellants to meet their representatives. We are very disappointed at this outcome.

Planning
Visit of the Chief Planning Inspector

2.118 In October 1997 we welcomed Mr Chris Shepley, the Chief Planning Inspector and Chief Executive of the Planning Inspectorate Agency, to our monthly meeting. Our discussions covered a wide range of issues, including such matters as workload and delays, the recruitment and

training of inspectors, quality control and customer satisfaction, procedural rules for inquiries, and a possible role for mediation in resolving planning disputes. The discussions will provide helpful background to our consideration of future developments in the planning field.

2.119 We have mentioned in recent Annual Reports the burden that the current programme of development plan inquiries has placed on the Planning Inspectorate and the effect this has had on the disposal of ordinary planning appeals. The Inspectorate has just completed the second of a three year programme to restore appeal handling times to optimum levels. Although it has not yet met its targets, it has improved handling times significantly. Further progress is expected in the coming year.

Modernising Planning: a Policy Statement

2.120 In January 1998 the Government issued a Policy Statement on "Modernising Planning". It identified five areas where the Government consider that gaps need to be filled. These are: the European context for planning in this country; clearer statements of national policy for the small number of projects where decentralisation of decision-making is not possible; effective arrangements for regional planning so that more issues can be resolved at this level and the resulting guidance is more regionally owned; a continuous search for improvement in local efficiency; and a willingness to consider economic instruments and other modern policy tools to help meet the objectives of positive planning.

2.121 The Policy Statement contained a certain amount about procedural matters. For instance, it put forward ideas for new practices in the processing of major infrastructure projects, such as the imposition of strict time limits and sanctions by way of awards of costs, the exclusion of written evidence and the curtailment of cross-examination. It further stated that the Government would be looking at responses to an earlier consultation paper on planning appeals (January 1997) to see if there were improvements to procedures which could speed up planning inquiries. It also referred to proposals for improving the development plan process through such measures as a clear timetable, accountability for slippage, negotiations with objectors ahead of the inquiry, and avoiding last minute changes to the plans.

Local plan procedures

2.122 We recorded in last year's Annual Report our response to the earlier consultation papers on proposals to improve development plan and planning inquiry procedures. The Policy Statement indicated that further consultations on matters covered in the Statement would take place. One such was a consultation paper on "Improving arrangements for the delivery of local plans and unitary development plans", issued in March 1998. Part 1 of the paper was concerned with proposed amendments to the Development Plan Regulations, mainly to give effect to a new two-stage deposit procedure for local plans. The purpose would be to ensure early consideration of objections and to enable the inquiry following the second stage to focus on objections still outstanding. We supported this proposal. We also supported a proposal that a local authority be required to make the inspector's report public within 8 weeks of receipt. However,

we expressed reservations about a proposal that in future, reasons for decisions taken by the local authority would be limited to those cases where they do not accept recommendations made by the inspector. We believe that the giving of reasons, even if only shortly expressed, is in the interests of good administration and accountability. We have made a similar point in the context of ordinary planning decisions at paragraphs 2.71 - 2.74 above. In the present context, we are strongly of the view that reasons should be given where a local authority agree with a recommendation made by the inspector but for reasons different from, or additional to, those given by the inspector.

2.123 Part 2 of the consultation paper was given over to a new draft guide to procedures and Code of Practice. Part 3 was concerned with proposed changes to the relevant Planning Policy Guidance. It was here that the Government incorporated their exhortations to local authorities on such matters as clearer plans, better targeted consultation, improved timetabling, and earlier negotiation with objectors. The advice seemed sensible, and we had little to say in the way of detailed comment. However, we did register our disappointment at the omission from the consultation paper of any reference to procedural rules for local plan inquiries. We have long urged that such procedural rules should be introduced. If a decision has been made on policy grounds not to introduce procedural rules, we feel that an explanation for the policy should be given.

Registered Homes Tribunals

2.124 During this year we felt obliged to approach the Parliamentary Under Secretary of State for Health with a report which we produced on Registered Homes Tribunals, about which we have had concerns for several years. Our comments were based on our observations of hearings over a five year period during which we have repeatedly urged the need for amendments to be made to the Tribunals' procedural rules. We have previously been given to understand that the Department of Health was intending to make such amendments but no progress has been made. We have been given firm assurances about Departmental intentions this year.

The prospect of progress

2.125 We hoped that our report would help inform the Department for the purpose of a White Paper on social services. The White Paper, so we understand, will include proposals for change to the system of regulating residential and nursing homes which will impact on the appeal system. The Department have confirmed the intention to make improvements to the operation of the Tribunal in the shorter term, by making the rule changes, and in the longer term, following primary legislation. Until now, we had formed the view that this area of work had taken low priority in the Department.

Background

Our concerns

2.126 Although the Tribunals do not deal with a high number of hearings, their work is extremely important. Their decisions have direct consequences for a person's livelihood. On the other hand, the people being accommodated in a home could be at risk if the establishment was not up to the approved standard, or if the premises were being inadequately managed. Against this background, we have been urging the Department to act because of perceived deficiencies in the

Tribunals' procedural rules on matters such as statutory time scales for filing evidence. The absence of time scales means that the Tribunals' meagre secretariat resource has no power to urge on the parties a deadline for filing evidence, with the result that hearings are often delayed. In some cases, the filing of evidence at a late stage of the process can also lead to requests for an adjournment. Such a delay might be to the benefit of an appellant seeking to oppose the closure of a home.

2.127 We have documented our concerns in our Annual Reports. During our observations of hearings, we have been alerted to the shared concerns of some of the Tribunals' judiciary including the apparent under-resourcing of the Tribunals' secretariat which is mainly staffed by one official. The responsibilities of this official include having to liaise with the lawyers representing parties to an appeal who might be competing for hearing dates, or who might not be co-operating with requests for evidence.

2.128 As we said in last year's Annual Report, we had hoped that in addition to the rule changes, consideration would also be given to the benefits for the system of appointing a judicial head. We referred to our special report **Tribunals: their Organisation and Independence**[1] in this context. We understand that the Department are considering the question of appointing a lead Chairman. Indeed, the idea of the chairmen appointing, from among themselves, a senior member to take forward their concerns has been mentioned informally to us in discussions with Tribunal judiciary; clearly they have worries themselves about the system.

Our report to the Minister

2.129 Since the Tribunals at present have no judicial head to represent their interests, we addressed our report to the Parliamentary Under Secretary of State, Mr Paul Boateng, M.P., notifying our action to the Department's Permanent Secretary. Among our observations we referred to the absence of any progress on amending the procedural rules, pointing out that a President or senior judicial figure at the helm of the Tribunals would have been in a strong position to persuade the Department to act. We referred to the late filing of evidence (discussed above). We observed that where inaccurate estimates have already been given for the length of the hearing so that cases have to be relisted on a later date, such problems compound the already onerous task of the Tribunals' secretariat. We also observed that the Tribunals adopt for most hearings an almost court-like process, with evidence taken on oath and the parties being asked to stand when the Chairman and members enter the hearing room. In most instances the parties are represented by Counsel. We have nevertheless observed hearings where the Tribunal has tried to create an informal setting. The important role of the chairman is particularly highlighted when there is a need to put an appellant at ease.

[1] Cm 3744

The Minister's response

2.130 The Minister welcomed our report. In his response, he confirmed that the Department were actively working on amending the rules as a matter of urgency. The Department intended to make the appeals process more efficient and to reduce costs and delays. We welcomed the proposal to make changes to the current statutory timescales for the submission of preliminary statements and for the submission of all evidence, including witness statements, to the Tribunal. This will provide sufficient time to allow the Tribunal to consider such evidence fully. The Department were also proposing to shorten the timescale for fixing dates for hearings, and to abandon the practice of allowing the parties to delay proceedings by engaging in protracted negotiations about a hearing date.

Preliminary hearings

2.131 We were pleased to hear of the possibility that there would be provision for preliminary hearings. Some chairmen hold such hearings in any event to resolve difficulties. Other possibilities include provision for striking out appeals for inordinate delay or failure to comply with directions.

Hearing accommodation

2.132 We had said in our report that the highest proportion of hearings that we had observed since 1993 had taken place in accommodation associated with the respondent to the appeal, that is a health authority or local authority. We are of the view that hearings should generally not take place in premises associated with the respondent as the appellant should not feel intimidated in any way. However, Departmental officials have apparently never received a complaint about the location of the hearing accommodation; they point to the convenience for the Tribunals in having access to amenities which are available to them within local authority or health authority premises. Another factor, pointed out by the Minister, is the preference for hearings to take place in the area of the home which is the subject of the appeal. We take the view that accommodation with the necessary amenities is generally available in a locality without the need to resort to health authority or local authority premises.

Training - a lead Chairman?

2.133 We have been concerned that, apart from the issue to new members of a guidance pack and one opportunity to observe a hearing, the chairmen and members are given no training whatsoever. This is another issue that has been mentioned to us by the Tribunal judiciary, some of whom consider that there would be benefits in formal training, and also in having the opportunity of meeting other members. The Minister confirmed that this should be addressed and that this was an area which might benefit from the introduction of a presidential system (which would require legislation) or a less formal arrangement such as a lead Chairman.

Mediation

2.134 One factor which emerged from our observations concerned the extent to which the parties engaged in dialogue on the first day of the hearing. In some cases, such discussions narrowed the issues on which the Tribunal had to adjudicate. In others, the parties were able to arrive at a mutually acceptable compromise. We suggested that the introduction of a provision for mediation was perhaps a matter which could be considered when making changes to the rules. The Minister informed

us that consideration would be given to the merits of introducing an arrangement for voluntary mediation, although the provision for preliminary hearings could itself provide an effective way of resolving difficulties between the parties.

2.135 We are pleased to learn that the Department proposes to act as a matter of urgency on the work needed to ensure the updating of the Tribunals' rules. We will report the outcome next year.

Road Traffic
Parking Adjudicators

2.136 In last year's Annual Report, we pointed out that, although the provisions in the Road Traffic Act 1991 establishing the parking adjudicators apply only to London, it was always intended that the new parking arrangements should be capable of being extended elsewhere in Great Britain. So far, the Parking Appeals Service operates only within London, under the auspices of the Parking Committee for London (now reconstituted as part of a wider-ranging Transport Committee for London), and at five venues outside London (High Wycombe, Maidstone, Oxford, Watford and Winchester), for which the Transport Committee for London also provide adjudication services. Provision of these out-of-London services is however likely to cease in 1999.

2.137 Last year, we noted with interest that local authorities elsewhere were considering how best they could adopt the new decriminalised parking arrangements for their own areas. One option being canvassed was the establishment of a series of Regional Parking Committees in England and Wales outside London. In the event, this has not come about, but we are able to report significant developments during the past year.

Scotland

2.138 Our Scottish Committee have recently considered proposals for the setting up of a Joint Committee to oversee the operation of a Parking Appeals Service in Scotland, initially in Edinburgh. Its membership is to comprise the Traffic Commissioner for the Scottish Traffic area and the City of Edinburgh Council. Until other authorities participate in the scheme, the Traffic Commissioner will have the sole responsibility for the appointment of the Adjudicator and his assistant adjudicators, subject to the approval of the Lord Advocate.

England and Wales outside London

2.139 In England and Wales outside London, under the sponsorship of the Department for the Environment, Transport and the Regions, plans are well advanced to establish a Joint Committee, comprising a small nucleus of local authorities, with other authorities buying in adjudication services. The committee would be supported by a Standing Conference of local authority officers, meeting on an annual basis. The committee intend to appoint a Chief Adjudicator and proper officer, together with other adjudicators, and to operate their own Parking Adjudication Service from next year. They propose to take over the existing out-of-London work from the Transport Committee for London by March 1999.

2.140 We were consulted both by the Department and by the local authority working group formed earlier this year to prepare for the establishment of the new Joint Committee. The working group has met at regular intervals and organised a conference in June in Birmingham at which

some 60-70 local authorities were represented. Six authorities (Birmingham, Manchester, Kent, Hampshire, Winchester and Neath Port Talbot) have provided the nucleus. Manchester City Council is expected to become the lead authority. It will provide the route through which the proposed National Parking Adjudication Service will be funded and resourced.

2.141 We gave a broad welcome to these proposals, whilst reminding the working group of the necessity for the new arrangements to maintain the integrity of the judicial process. We reiterated our advice given in last year's Annual Report that great care should be taken to ensure that the parking adjudication functions are at all times kept separate from the enforcement functions of the local authorities involved. Amongst our principal concerns are that adjudicators must be able to exercise their judicial functions free from improper influences and that public confidence in the independence of the adjudication process ought to be maintained.

2.142 We wish this new initiative success and look forward to being kept fully informed of further developments, including the arrangements for the appointment of the Chief Adjudicator and other adjudicators, the choice of hearing accommodation and the plans for training adjudicators and their support staff.

Social Security Independent Tribunal Service

2.143 Earlier this year we bade farewell to Judge Keith Bassingthwaighte who had led the Independent Tribunal Service as President throughout a period of considerable change, not least during consultation on the major changes to the appeal system (described in Part I of this Report). We wish to record our appreciation of Judge Bassingthwaighte, who unfailingly kept us informed and sought our advice about developments and initiatives that he introduced within ITS to improve and streamline procedures. Likewise, we express our appreciation to the ITS Chief Executive, Steve Williams, who has liaised and responded to our requests for information about various aspects of ITS operations. We welcome the new ITS President, Judge Michael Harris, whom we hope to meet later this year. We look forward to developing a close relationship with the new unified appeal Tribunal and the new appeals service Agency, which will be administering the appeals made to the new single Tribunal service.

Annual Report 1996-97

2.144 The ITS Annual Report which was published in October 1997 outlined some of the positive results of the initiatives that had been introduced by ITS in their own change programme. This preceded the plans for major changes in respect of social security appeals. The initiatives included the allocation to tribunal clerks of some interlocutory work and the streamlining of case management. We welcomed the establishment of User Groups and the indications in the report of a positive atmosphere between ITS and the User Groups. We mention below the workload and output of ITS during Judge Bassingthwaighte's tenure. The increase of appeals is reflected in the report, which showed that appeals in respect of incapacity benefit were accounting for 50% of the hearings held by the Social Security Appeal Tribunals.

Continuing regional structure

2.145 Judge Bassingthwaighte set up within ITS venue-based teams throughout the country which are responsible for their own caseload from start to finish. We understand that judicial management and training responsibility will in the future devolve to the Chairman within each district. That Chairman will be answerable to the Regional Chairman, the current regional structure remaining in place under the new arrangements.

Present workload and clearance rates

2.146 Judge Bassingthwaighte informed us that during his period in office the caseload had doubled but clearance rates had been held. We understand that ITS received 363,000 appeals during the 1997/98 financial year. The organisation dealt with 340,000 appeals, a 29% increase on the previous year. They cleared more appeals during the last quarter of 1997 than they received. The clearance rate for the SSATs in June 1998 was 25 weeks. The clearance rate for the Disability Appeal Tribunals averaged 30 weeks and the Medical Appeal Tribunals, where a common problem is delay awaiting evidence, were averaging 33 weeks. ITS apparently cleared 59% extra appeals over a two year period. These results were achieved during a period of great uncertainty for the organisation.

2.147 We noted that the ITS Annual Report set out the progress made on the installation of the new computer system that we mention at paragraph 1.12. As we say in Part I of this Report, we have argued that the reforms to the appeals arrangements are unnecessary, at least until after the improved decision-making procedures have been tried. If the changes have to go forward it seems clear that the improved IT arrangements, and other measures such as the introduction of the venue-based teams across the tribunal systems within ITS, will equip the organisation very capably to become the new appeal body set up by the Social Security Act and that the ITS, consciously or unconsciously, is preparing itself for the major changes ahead.

Taxation

Departmental Study and Evaluation of Tax Appeals

2.148 In last year's Annual Report we discussed the Interim Report on the Tax Appeals System by the Tax Law Review Committee of the Institute for Fiscal Studies. In February 1998 the Lord Chancellor, with the agreement of the Chancellor of the Exchequer, announced that the Lord Chancellor's Department would undertake a study and evaluation of the current tax appeals system. The terms of reference were to study and evaluate the statutory functions and arrangements for tax appeals, taking account of: (a) the current and necessary structures and organisation of the VAT and Duties Tribunals, and the General and Special Commissioners of Income Tax, including recruitment/ appointment and training of judicial and non-judicial officers, and relationships between the tribunals; (b) the need for accountability and value for money, including effective planning, objective setting, resource management, information systems and Ministerial responsibility; (c) the need for quality of service to taxpayers, including reducing administrative burdens for business and individuals, and options for the use of information and other technology; (d) the Interim Report of the Tax Law Review Committee; (e) developments in workloads in the light of the changing role of the tribunals, and developments in administrative justice and tribunals generally.

2.149 This year has been the first full year of self-assessment, and the implications for the tax appeals system are considerable. We consider that LCD's study and evaluation is timely and potentially of great importance. We look forward to consultation on recommendations for change in due course.

Tribunals Association

2.150 Last year we reported the establishment and initial activities of the Tribunals Association. The Association, whose members are Heads of the major tribunal systems under our jurisdiction, provides a forum for the exchange of views and the promotion of good practice amongst tribunals. This year we carried out the planned 12 monthly review of progress so far. We found that although activities have been modest, responses have been forthcoming and feedback has been encouraging. We concluded that the Association should continue for the time being, with its future being discussed again at our next Conference of Tribunal Heads. This may also provide the opportunity for the secretariat duties to be passed to another body, which was always our intention.

Tribunal Training

Tribunals Committee of the Judicial Studies Board

2.151 In last year's Annual Report, we described in some detail our major survey of training then provided for chairmen and members of the principal tribunal systems in England and Wales falling within our supervision. The survey was taken forward at the request of the Tribunals Committee of the Judicial Studies Board, to whom we passed the two digests summarising the information we had gathered from the survey. These digests provided the foundation for a project, initiated by the Tribunals Committee of the Judicial Studies Board last year, to conduct a wide-ranging tribunal training needs analysis, and to explore the role of the Judicial Studies Board and the Tribunals Committee in relation to future training provision.

2.152 The project is being undertaken by a team from Birmingham University, directed by Professor Jennifer Tann and Professor John Baldwin, and is nearing completion. Two of our members, Professor Partington and Mrs Anderson, were interviewed as part of the project. The study aims to identify both generic and specific training needs of tribunal chairmen and members and is to formulate a strategy for the content, structure and delivery of such training in the future. We look forward to learning about the outcome of the project and having the opportunity to consider the project report, which is being prepared for the Tribunals Committee.

2.153 Regular meetings continued to take place during the year between our Secretariat and the Judicial Studies Board Senior Training Adviser and the Tribunals Training Adviser to exchange views and information on matters of common interest. As mentioned in Part I of this Report, we were represented at the Human Rights seminar organised by the Tribunals Committee to begin the learning process in preparation for the incorporation of the European Convention into domestic law. One of our members, Mr Brown, the newly appointed Council representative on the Tribunals Committee, attended the Judicial Studies Board residential Tribunals Skills Development Course in March 1998. We were pleased to note the substantial presence of Education Appeal Committee representatives on that course and would

continue to encourage the Tribunals Committee to focus its attention on tribunal systems where there is a less established training provision.

2.154 We were gratified that the Tribunals Committee gave a welcome to our special report **Tribunals: their Organisation and Independence**[1]. In their response, the Tribunals Committee drew particular attention to the view expressed in paragraph 2.25 of our report that persons appointed as tribunal Presidents or judicial Heads should be able to demonstrate an aptitude for judicial management and administration, and the ability to "manage" judicial colleagues. We welcome both the recognition by the Tribunals Committee that there is an urgent need for more training in judicial management skills and the prospect of two-day pilot course early in 1999, to which we have been invited to send a representative. The subjects to be given prominence on the course include principles of government finance and personnel management, presentational and media skills, and interviewing techniques. We regard this as a positive development and believe that it will serve to assist tribunal Presidents and judicial Heads to carry out their multi-faceted role more effectively.

[1] Cm 3744

PART III: THE COUNCIL

Quinquennial Review

3.1 At the end of November 1997 the Lord Chancellor announced that his Department was undertaking its Quinquennial Review of the Council. The terms of reference of the review were broad; it was to examine the purpose, operation and achievements of the Council, taking account of the legislation by which it was established, the needs of the tribunals on which it reports, and the resource implications for the public purse. The review was to make recommendations to the Director General, Policy at the Lord Chancellor's Department. The Department engaged a retired civil servant, Mr Roy Harrington, to assist in carrying out the review. The results of Mr Harrington's work were submitted to the Department at the end of May 1998.

3.2 Inevitably, the review meant some additional work for us. We welcomed the review and were glad to assist Mr Harrington who always sought to minimise the disruption to our day-to-day business and that of our Secretariat. We devoted two of our monthly meetings (March and May) to discussing issues raised by Mr Harrington, who also consulted relevant Whitehall Departments, Tribunal Heads, Agency Chief Executives and other interested bodies.

3.3 We look forward to engaging in further dialogue with the Lord Chancellor's Department.

Membership

3.4 There have been a number of changes to our membership during the past year.

Retirements

3.5 *Mr T Norman Biggart CBE, WS*: retired at the end of May 1998, after eight years as Chairman of the Scottish Committee and member of the Council. Mr Biggart, exceptionally, had served three terms (the third term being further extended by two and a half months). Mr Biggart brought a wealth of legal knowledge and experience to our deliberations, and those of the Legal Committee. We wish to record our thanks and appreciation to him.

Mrs Annie Anderson: retired in February 1998 after six years on the Council. She was the chairman of the Council's Visits Committee; a member of the Education Tribunals Committee, the Health and Social Security Committee and the Representation and Assistance Committee. She represented the Council on the Judicial Studies Board's Tribunals Committee. Her contribution to our work over many different areas was greatly valued.

Mrs Sally Friend MBE JP: retired at the end of October 1997 also after six years on the Council. She was a member of the Health and Social Security Committee and the Visits Committee. Her lively contributions to our discussions were much appreciated.

Appointments

3.6 Norman Biggart's successor as Chairman of the Scottish Committee and member of the Council is Mr R John Elliot WS, who took up office on 1st June 1998. Chairman of Lindsays WS, Edinburgh since 1994, Mr Elliot was President of the Law Society of Scotland 1997-98.

Sally Friend's place on the Council was taken by Mr Patrick Waring with effect from 1st November 1997. Mr Waring is a freelance consultant who advises universities and business organisations about obtaining funding from the European Commission. His background is in the Armed Services. Mr Waring is a wheelchair user, and as such contributes an additional valuable perspective to the Council.

Annie Anderson's place on the Council was taken by Mrs Susan Howdle with effect from 1st April 1998. Mrs Howdle is a former lecturer in law, and brings to the Council experience as Vice-President of the Yorkshire Rent Assessment Panel, and as a part-time Chairman of Social Security Appeal Tribunals.

Current membership

3.7 Our full membership is recorded below. As shown on page ii of this Report some are members of both the Council and the Scottish Committee.

The Lord Archer of Sandwell PC, QC: Chairman of the Council since 1992. Member of Parliament 1966-1992 and Solicitor General 1974-1979.

Mr R John Elliot WS: Chairman Lindsays WS, Edinburgh since 1994. President of the Law Society of Scotland 1997-98. Member, Age Concern Edinburgh management group. Chairman of the Scottish Committee and a member of the Council since 1998.

Mr Michael Brown JP: Partner in Clifford Chance 1978-95, and Justice of the Peace since 1996. Chairman of Community Housing Association, London; School Governor; and member of the Tribunals Committee of the Judicial Studies Board. Member of the Council since 1996.

Mr Rex Davie CB: Former civil servant in the Cabinet Office. Head of the Security Division 1983-1989. Principal Establishment and Finance Officer 1989-1993. Member of the Council since 1995.

Mr John Eames: Specialist practitioner in social security law at the Wiltshire Law Centre, Swindon since 1989. Trainer and lecturer in social security law. Visiting lecturer at the Universities of Bristol, West of England and Southampton. Part-time member of the Disability Appeal Tribunals 1992-96. Member of the South West Legal Services Committee. Member of the Council since 1996.

Mrs Anne Galbraith: Volunteer worker and latterly Chairman of Newcastle Citizens Advice Bureau 1967-87. Founder of Newcastle CAB Tribunal Assistance Scheme. Adviser to the Prime Minister on the Citizen's Charter 1994-97. Former Chairman of the Royal Victoria Hospital NHS Trust, Newcastle-upon-Tyne. Former lecturer in welfare and employment law at the University of Northumbria. Member of the Council since 1997.

Mrs Susan Howdle: Former lecturer in law at the University of Sheffield. Vice-President of the Methodist Conference 1993-94, and Chairman of Methodist Homes for the Aged. Vice-President of the Yorkshire Rent Assessment Panel 1991-98, and a part-time Chairman of the Social Security Appeal Tribunals 1996-98. Member of the Council since 1998.

Mr Ian Irvine CA: Chartered Accountant. Former Managing Director of George Outram and Co Ltd. Non-Executive Director of the Glasgow Development Agency, Scottish Opera Ltd and of West Glasgow Hospitals University NHS Trust. Member of the Council since 1996.

Mr Robert Jones CVO: Assistant Master, Whitgift School 1957; HM Inspector of Schools (Wales) 1963; Welsh Office 1967 (as Secretary to Prince of Wales Investiture Committee); Under Secretary and Head of Welsh Office Education Department 1980-92. Member of the Council since 1993.

Mr Sam Jones CBE, DL: Town Clerk of the Corporation of London 1991-96. Chief Executive of Leicestershire County Council 1976-91. Chairman of the Heathrow Airport Consultative Committee. Chairman of the North Devon Marketing Bureau. Chairman of the Westcountry Ambulance Service NHS Trust. Member of the Council since 1996.

Dr Carole Kaplan: Senior lecturer and Consultant in Child and Adolescent Psychiatry, Fleming Nuffield Unit, Newcastle-upon-Tyne. Member of university, regional and national committees dealing with undergraduate and postgraduate education and training. Member of the Lord Chancellor's Advisory Board on Family Law since April 1997. Member of the Council since 1993.

Professor Martin Partington: Professor of Law and Pro-Vice-Chancellor at the University of Bristol. Member of the Civil Justice Council. A law teacher since 1966, he has served as a member of the Lord Chancellor's Advisory Committee on Legal Aid, as Vice-Chairman of the Legal Action Group, as a part-time Chairman of the Social Security Appeal Tribunals and as adviser on training to the President of the Independent Tribunal Service. Member of the Tribunals Committee of the Judicial Studies Board 1988-1994. Member of the Council since 1994.

Mr Ian Penman CB: Former civil servant. Held various posts in the Scottish Office, including Deputy Secretary in charge of Central Services 1984-91. Seconded in 1991 to Scottish Homes as interim Chief Executive. Conducted minor public inquiries in Scotland 1992-94. Chairman of Viewpoint Housing Association 1991-95. Member of the Council since 1994.

Mr Douglas Readings: A barrister practising in Birmingham, he has regularly conducted cases before a variety of tribunals and planning inquiries. Assistant Recorder since 1991. Member of the Council since 1997.

Mr Patrick Waring: A freelance consultant who advises universities and business organisations about obtaining funding from the European

Commission. He was a pilot in the Royal Navy. Member of the Council since 1997.

Mr Michael Buckley: Parliamentary Commissioner for Administration (the principal Ombudsman in the UK) and Health Service Commissioner. Ex officio a member of the Council since his appointment in 1997.

The Scottish Membership

3.8 In addition to the Council members noted at page ii, the Scottish Committee has the following membership:

Current membership

Ms Margaret Burns: Member of the Scottish Consumer Council and its Legal Advisory Group. Member of the Scottish Conveyancing and Executry Board. Tutor in the Department of Law, University of Aberdeen. Member of the Health and Safety Commission. Member of the Scottish Committee since 1992.

Mrs Pek Yeong Berry MBE JP: Retired Director of Central Scotland Racial Equality Council. Member of the Stirling Justices Committee; member of the Faculty of Advocates' Disciplinary Tribunal. Formerly a lecturer in Zoology at the University of Malaya and an interpreter in Cantonese. Member of the Scottish Committee since 1995.

Mrs Anne Middleton: Deputy Scottish Secretary of UNISON, the Public Service Union. President of the General Council of the Scottish TUC and chairman of its Public Services Committee. Member of the Scottish Council for Voluntary Organisations and of the British Administrative Council. Representative on the European Network of the Unemployed. Member of the Scottish Committee since 1994.

Mrs Heather B Sheerin OBE: Chairman, Highland Communities NHS Trust. Member of the Boards of Inverness and Nairn Enterprise Company and Inverness College. Director of Moray Firth Radio and Inverness Chamber of Commerce. Member of the Scottish Committee since 1994.

The Council's staff

3.9 At the end of our reporting year, our Secretariat comprised the following: Mr A C Twort (Secretary), Mr A Hermon, Mr G P Ralph, Mrs P J Fairbairn, Miss H J Wiltshire, Mrs P Mehta, Miss L Prigmore, Mr R Gohil, Miss K Francis and Mrs L A Chilver. The Secretariat of the Scottish Committee comprised Mrs E M MacRae (Secretary), Mr G Quinn and Mrs J Hewitt.

3.10 During much of this Council year, the Secretariat has been operating below strength owing to the long-term absence of two members of staff. Despite every effort, unavoidably some areas of work have received less attention than usual.

The Council's finances

3.11 The cost of financing the Council and the Scottish Committee during the past financial year is summarised at **Appendix A**.

The Council's work 1997/98

3.12 In addition to the topics which we and our Committees considered during the year and which are referred to specifically in the text of this Report, we list at **Appendix B** the Statutory Instruments considered by us and

made during 1997/98. Matters dealt with separately by our Scottish Committee are covered by their Annual Report.

Meetings and papers

3.13 We considered 71 papers (20 of these were addenda to previous papers) at 11 meetings of the full Council during the past year. Our Committees, listed at **Appendix C,** dealt with 22 papers, and the Scottish Committee considered 48 papers (11 of which were addenda) at four meetings.

3.14 We held discussions during the course of the year with Mr Adrian Smith, Ms Catrin Conway, and Ms Sarah Wainer (Department for Education and Employment); Mr Chris Shepley (Chief Planning Inspector and Chief Executive of the Planning Inspectorate Agency); Mrs Zena Muth (Head of the Mental Health Review Tribunal Secretariat); and Mr David Laverick (Chief Executive of the Family Health Service Appeal Authority). Additionally, we held two discussions with Mr Roy Harrington who was engaged by the Lord Chancellor's Department to assist in carrying out the Quinquennial Review of the Council.

A summary of our activities

3.15 A small selection of the work undertaken by our Secretariat during the past year is referred to below. In addition to preparing papers for us dealing with the topics covered by this Report, and on the statutory instruments referred to in **Appendix B**, our Secretariat are in close contact with Departments, tribunals and public and other bodies. This is both to take forward our decisions and to deal with a wide range of policy matters with which we are concerned relating to tribunals and inquiries.

Computer strategy

3.16 Our Secretariat have been working with consultants, employed by the Lord Chancellor's Department, to replace the computer system containing the information database of members' visits. The current system is not Year 2000 compliant. This will provide an opportunity for the system to be streamlined and improved.

Complaints

3.17 Most of the complaints we receive about tribunals are handled by our Secretariat. But our governing Act does not give us the authority to adjudicate on complaints, and we have to make it clear to many of those who complain that we have no power to change a tribunal decision or to interfere with the conduct of a case. Since most complainants seek that form of remedy from us we are unable to offer them any effective redress. To suggest that we can, for example by pursuing the complaint with the tribunal concerned, raises false expectations in the minds of complainants who then feel let down. It is also a source of annoyance to tribunal members. Accordingly, when our Secretariat acknowledge a complaint the letter is accompanied by a leaflet which explains what our functions are, why we cannot take action and where to turn for advice. This includes reference to the Parliamentary Commissioner for Administration within whose jurisdiction complaints about the actions of the administrative staff of the tribunals now generally fall.

3.18 Sometimes the information adds to our understanding of the difficulties arising at a particular tribunal and we are able to acknowledge this in the reply which is sent, even though we cannot take action on the complaint itself. On a few occasions the allegation may suggest that proper procedures are not being followed. Our Secretariat will then forward the

correspondence to the head of the tribunal who has a direct interest in remedying shortcomings of this kind. But we look more closely at complaints which reveal evidence of unreasonable delay in holding a hearing, or indicate that the procedures of a particular tribunal or inquiry may be defective or inadequate. These may point to administrative or procedural shortcomings on which the tribunal or Department need to take action and, in some cases, we may ask our Secretariat to make further enquiries about the nature and extent of the problem. But this takes time and, regrettably, any recommendations we may make at the end of the day are unlikely to benefit the person who made the original complaint.

Visits and conferences

Our visits policy

3.19 Our visits to tribunals are the most effective means by which we can discharge our statutory duty to "keep under review the constitution and working" of the tribunals we supervise. The discharge of our duty in relation to inquiries is assisted in the same way. We never visit unannounced but make an appointment in advance. The visit is always preceded by a letter which refers to our independence and to the fact that our purpose is solely to observe, and which emphasises that we will take no part in the proceedings or be involved in the decisions taken. It is accompanied by a leaflet summarising our role and explaining how we operate. We are anxious that those whom we are likely to visit should know something about us and about our work, and we have asked the Heads of tribunals to make the leaflet available to all new members on their appointment.

3.20 It is important to our advisory function for members to develop through their visits a practical knowledge of the tribunals that we supervise. That is one of their main purposes. We particularly value the opportunity which visits give us to see how the procedures we have helped to create or on which we have advised are operating; and we welcome the opportunity to talk to those who are closely involved in the day-to-day operation of the tribunal, and to hear what they have to say about any procedural or other problems they may be experiencing. We are also glad to accept invitations to visit training seminars and conferences. These more informal occasions provide us with a further opportunity to meet people working in tribunals and to develop our knowledge and understanding of their problems, as well as to tell them something about the Council and our work. We have found that attending training events run by the Judicial Studies Board has been particularly useful in this regard.

3.21 Members provide a written report to colleagues following each visit. The purpose is to inform other members about the visit and to draw attention to any points arising from it. We are then able to consider any procedural or other issues which come to light either from what was seen or from the member's discussion with the tribunal. We amass considerable information about the workings of a particular tribunal over a period of time. Occasionally this provides evidence of a need for change, requiring action to be taken by the tribunal or the Department. If, after substantial experience of the practical workings of a tribunal, we see features in it which fall short of the standards we expect, we will pass our concerns to the appropriate tribunal authority or the Department and suggest action to remedy the defect.

3.22 We visit approximately 100 hearings conducted by a variety of tribunals and inquiries in England and Wales each year (our Scottish Committee visit around 50 tribunal hearings in Scotland over the same period and we have the opportunity of seeing their visit reports). We take care in preparing our annual programme to ensure that it covers a representative sample of tribunals in various parts of the country so that we have a good picture of how a particular tribunal and its procedures are operating. High in the programme are those tribunals which we have decided should be subject to a detailed review (we usually select at least one tribunal for closer scrutiny each year) and those which, from our earlier visits, suggest there may be cause for concern, or where changes have been implemented or are planned. Subsequent visits enable us to test the validity of earlier observations or to establish how widespread the features are which cause us concern. But our visits are not confined to the major tribunals. We also look for the opportunity each year to visit hearings conducted by the smaller tribunals under our supervision, many of which sit only rarely. The number of visits we are able to make to any particular major tribunal system each year covers only a small segment of its total activity. But significant patterns do emerge from our visits over a period of time. We have occasionally used this evidence, in anonymised form, to support the case for change which we put to the relevant Department. We have found this practice useful: the cumulative effect of comments taken from our visit reports over time has a telling impact, bringing home through description of events observed the need for change.

Feedback to tribunals

3.23 We know that many tribunals would welcome something more by way of information about what we have found in the course of our visits. In line with our policy, we prepared a report on the Registered Homes Tribunals this year. The Registered Homes Tribunals at present have no judicial Head; thus, as we report at paragraph 2.129, we addressed our report to the Parliamentary Under Secretary of State for Health.

3.24 The report was welcomed by the Minister who found our observations helpful and informative. The Department is taking positive action to address many of the issues which our report had highlighted.

Visits in 1997/98

3.25 During the year, members of the Council and of the Scottish Committee (and, in a few instances, our Secretariat) made a total of 147 visits to the tribunals and inquiries listed in **Appendix B**.

3.26 Our members also attended and in some cases addressed 26 conferences and training seminars. These are further listed in **Appendix B**.

Overseas visitor

3.27 We are always glad to receive visitors from overseas who are interested in our work, both to share our experience and to gain insight into how different legal and administrative systems tackle the problems with which we are concerned. Our Secretariat had a useful discussion this year with Mme Francoise Ducarouge, President of the Tribunal Administratif de Versailles.

Appendices

3.28 The Report contains the following Appendices, including those not mentioned elsewhere in the text:

Appendix A: The cost of the Council and of the Scottish Committee

(paragraph 3.11)

1. The table below shows expenditure during the financial year ended 31st March 1998 and the 1997 figures for comparison.

Item	*Council on Tribunals*		*Scottish Committee*	
	1997 £	*1998* £	*1997* £	*1998* £
Staff salaries	337,156	340,353	45,166	45,445
Retainers: Chairman and Members	155,745	167,313	24,440	27,820
Administrative costs	73,799	67,735	8,875	9,952

The Council on Tribunal's retainers include the salary of the Scottish Committee Chairman and retainers paid to members of the Council who serve on the Scottish Committee.

The administrative costs include travelling expenses incurred through Council work.

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2. The Council Chairman's and Scottish Committee Chairman's salaries were last increased in April 1998 to £37,447 and £18,724 respectively. The retainers for Members of the Council (based on 44 days work a year) and of the Scottish Committee (based on 35 days work a year) were last increased in August 1998 to £8,563 and £6,813 respectively.

Appendix B: The Council's work 1997/98

(paragraphs 3.12, 3.15, 3.25 and 3.26)

This Appendix contains a list of the Statutory Instruments considered by the Council and made during the year 1997/98, together with a list of the Tribunals, Inquiries and Conferences visited by Council and Scottish Committee members during this period. Scottish visits are shown separately. Tribunals visited in Scotland whose jurisdiction covers Great Britain are shown as "(in Scotland)". Other tribunals established under Scottish legislation are shown either as "(Scotland)" or by their title, eg. Lands Tribunal for Scotland. Numbers in brackets after the name of the tribunal indicate the number of visits where more than one was made. The list includes details of where the visits took place.

Statutory Instruments

The Airports (Groundhandling) Regulations 1997	S.I. 1997/2389
The Child Support (Miscellaneous Amendments) Regulations 1998	S.I. 1998/58
The Consumer Credit Licensing (Appeals) Regulations 1998	S.I. 1998/1203
The Lands Tribunal (Amendment) Rules 1998	S.I. 1998/22
The Local Government Changes for England (Valuation Tribunals) Regulations 1997	S.I. 1997/2954
The Mental Health Review Tribunal (Amendment) Rules 1998	S.I. 1998/1189
The National Crime Squad (Senior Police Members) (Appeals) Order 1998	S.I. 1998/639
The NCIS (Senior Police Members) (Appeals) Order 1998	S.I. 1998/640
The National Health Service (Service Committees and Tribunal) Amendment Regulations 1998	S.I. 1998/674
The National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1998	S.I. 1998/657
The National Health Service (Service Committees and Tribunal) (Scotland) Amendment (No. 2) Regulations 1998	S.I. 1998/1424
The Pensions Appeal Tribunals (Scotland) (Amendment) Rules 1998	S.I. 1998/1225
The Plant Breeders' Rights (Fees) Regulations 1998	S.I. 1998/1021
The Plant Breeders' Rights Regulations 1998	S.I. 1998/1027
The Road Traffic (Permitted Parking Area and Special Parking Area) (City of Edinburgh) Designation Order 1998	S.I. 1998/1539
The Road Traffic (Permitted Parking Area and Special Parking Area) (County of Hertfordshire) (Borough of Watford) Order 1997	S.I. 1997/2304
The Road Traffic (Permitted Parking Area and Special Parking Area) (County of Kent) (Borough of Maidstone) Order 1997	S.I. 1997/2078
The Social Security (Recovery of Benefits) (Appeals) Regulations 1997	S.I. 1997/2237
The Special Immigration Appeals Commission (Procedure) Rules 1998	S.I. 1998/1881
The Trade Marks (Amendment) Rules 1998	S.I. 1998/925

Visits to tribunals, inquiries and conferences

Tribunals

Child Support Appeal Tribunals (4)
Cardiff, London, Stockton, Wolverhampton
Child Support Appeal Tribunals (in Scotland) (3)
Edinburgh, Glasgow, Inverness
Children's Hearing (Scotland) (4)
Inverness, Bellshill, Perth, Stirling
Child Support Commissioners
London
Civil Aviation Authority
London
Criminal Injuries Compensation Appeals Panel
York
Criminal Injuries Compensation Appeals Panel (in Scotland)
Glasgow
Crofters Commission (Scotland)
Inverness
Crofters Commission Plenary Meeting (Scotland)
Inverness
Data Protection Tribunal
London
Designated Lifer Panel (Scotland)
Greenock
Director General of Fair Trading
Liverpool
Disability Appeal Tribunals (4)
Birmingham, Doncaster, Eastbourne, Swansea
Disability Appeal Tribunals (in Scotland) (3)
Dundee, Galashiels, Glasgow
Disability Appeal Tribunals - Domiciliary (in Scotland)
Greenock
Education Appeal Committees (9)
Aylesbury, Bracknell, Hendon (2), Ilford, Kings Lynn, Newcastle upon Tyne, Oldbury, Reading
Education Appeal Committees (in Scotland) (4)
Greenock, Glasgow, Inverness, Stirling
Education Appeal Committees for Grant Maintained Schools (2)
London, Wisbech
Family Health Service Appeal Authority (3)
Basingstoke, London, Newcastle upon Tyne
General Commissioners of Income Tax (3)
Bridgwater, London, Newcastle upon Tyne
General Commissioners of Income Tax (in Scotland) (2)
Glasgow, Haddington
Health Authorities Discipline Committees (4)
Cambridge, Leeds, Shrewsbury, St Austell
Immigration Adjudicators (6)
Birmingham (2), Feltham, Leeds, London, Salford
Immigration Appeal Tribunal (2)
London (2)

Immigration Appeal Tribunal (in Scotland)
Glasgow
Industrial Tribunals (5)
Colwyn Bay, Newcastle upon Tyne (2), Shrewsbury, Southampton
Industrial Tribunals (in Scotland) (3)
Dundee, Edinburgh, Glasgow
Lands Tribunal (2)
London (2)
Medical Appeal Tribunals (3)
Birmingham, Bristol, Newcastle upon Tyne
Medical Appeal Tribunals (In Scotland) (2)
Ayr, Edinburgh
Mental Health Review Tribunals (6)
Crowthorne, Glan Clwyd, Hartlepool, Stafford, Walsgrave, Wrexham
National Health Service Discipline Committees (in Scotland) (2)
Glasgow (2)
National Health Service National Appeal Panel (in Scotland) (2)
Edinburgh (2)
Parking Adjudicators (2)
High Wycombe, Oxford
Pensions Appeal Tribunals (5)
Cardiff (2), London (3)
Pensions Appeal Tribunals (in Scotland)
Edinburgh
Pensions Ombudsman
London
Registered Homes Tribunals (6)
Chelmsford, Croydon, Runcorn, Stafford, Stockport, Winchester
Rent Assessment Committees (5)
Brighton, Bury St Edmunds, Hatfield, Liverpool, Newcastle upon Tyne
Rent Assessment Committees (in Scotland) (2)
Aberdeen, Glasgow
Social Security Appeal Tribunals (5)
Bristol, Enfield, Exeter, South Shields, Sunderland
Social Security Appeal Tribunals (in Scotland) (3)
Dumbarton, Inverness, Stornoway
Special Educational Needs Tribunal (6)
Birmingham, Cambridge, Coventry, London, Oxford, Swansea
Traffic Commissioners (2)
Leeds, Swindon
Traffic Commissioners (in Scotland)
Edinburgh
Transport Tribunal
London
Valuation Tribunals (3)
Pembroke Dock, Plymouth, Swanage
Valuation Appeal Committees (in Scotland) (4)
Ayr, Glenrothes, Paisley, Lanark
VAT and Duties Tribunal
London
VAT and Duties Tribunal (in Scotland)
Edinburgh

Local plan inquiries	Local plan inquiry (in Scotland), Dunblane Local plan inquiry, Farnborough Local plan inquiry, Hexham Local plan inquiry, Maentwrog
Other inquiries visited	Appeal to Secretary of State from a Director General of Fair Trading determination, Birmingham Planning appeal inquiry (2), Derby, Weston-super-Mare Highway inquiry, Talgarth Public inquiry under the Merchant Shipping Act (in Scotland), Inverness
Conferences and training seminars	The Accountability and Transparency of Non-Departmental Public Bodies Training Seminar, London British and Irish Ombudsman Association Training Seminar, London Disability Appeal Tribunals Training Seminar, Durham Disability Appeal Tribunals Training Seminar (in Scotland), Edinburgh European Convention on Human Rights Conference, London Immigration Appellate Authority Conference, London Immigration Appellate Authority Judicial Conference, Cambridge Industrial Tribunals Training Day, Ripon Industrial Tribunals Users Consultative Committee, Birmingham The International Conference on Administrative Justice, Bristol (4) Judicial Studies Board Tribunal Skills Development Course, Stratford Upon Avon Mental Health Review Tribunals Regional AGM Conference, Harrogate Mental Health Review Tribunals Annual Members Meeting, Exeter Mental Health Review Tribunals Induction Training Conference, Normanton Mental Health Review Tribunals Induction Training Conference, Newcastle upon Tyne Mental Health Review Tribunals Training Seminar, Newbury Public Inquiries Training Seminar (in Scotland), Glasgow Responses to the Social Security Bill Conference, London Social Security Appeal Tribunals Training Seminar, London Social Security Appeal Tribunals Training Seminar (in Scotland), Aberdeen Traffic Commissioners Conference, Bromsgrove Valuation Tribunals Training Seminar, Reading Valuation Appeal Panels Training Seminar (in Scotland), Edinburgh

Appendix C: The Committees of the Council

(paragraph 3.13)

1. There are at present six committees of the Council, apart from the Scottish Committee.

2. Much committee business is transacted by correspondence, but meetings are held as and when required, generally on the day of the monthly Council meeting. In practice, committees (or, in cases of great urgency, their chairmen) deal with straightforward business within their sphere of interest, reporting to the Council as necessary.

3. The committees, with an indication of their respective areas of activity, and their membership, are (in alphabetical order):

Education Tribunals Committee

The procedures of Education Appeal Committees (both local authority and grant-maintained) and of the Special Educational Needs Tribunal. ***Membership:*** Mr R H Jones (Chairman); Mrs A Anderson (until February 1998); Mr S M D Brown; Mr S Jones; Dr C A Kaplan.

Health and Social Security Committee

Most matters concerning social security, health and related subjects, including tribunals and inquiries dealing with social security, medical and disability issues. ***Membership:*** Dr C A Kaplan (Chairman from October 1997); Mrs A Anderson (until February 1998); Mr J H Eames; Mrs S Friend (until October 1997); Mrs A Galbraith (from March 1998); Professor T M Partington (from September 1997); Mr I D Penman.

Legal Committee

Matters having a strong legal content, including the scrutiny of primary and subordinate legislation. ***Membership:*** Professor T M Partington (Chairman); Mr T N Biggart (until May 1998); Mr S M D Brown; Mr D G Readings (from December 1997).

Planning Procedures Committee

Town and country planning, highways, and other related subjects which may involve public inquiries or related procedures, including the scrutiny of primary and subordinate legislation. ***Membership:*** Mr I D Penman (Chairman); Mr S R Davie; Mr S Jones; Professor T M Partington.

Representation and Assistance Committee

Matters concerning the provision of professional or other representation or assistance in tribunal and inquiry proceedings. ***Membership:*** Professor T M Partington (Chairman); Mrs A Anderson (until February 1998); Mr J H Eames; Mr R H Jones.

Visits Committee

The Council's visits policy and the planning and organisation of visits by members of the Council to tribunals, inquiries, training seminars and conferences. ***Membership:*** Mrs A Anderson (Chairman until February 1998); Mr R H Jones (Chairman from March 1998); Mr S M D Brown; Mr S R Davie (from March 1998); Mrs S Friend (until October 1997); Mr P A A Waring (from March 1998).

Appendix D: A note on the constitution and functions of the Council

(paragraph 3.28)

1. The Council were set up by the Tribunals and Inquiries Act 1958 and now operate under the Tribunals and Inquiries Act 1992.

2. The Council are to consist of not more than 15 or less than 10 members appointed by the Lord Chancellor and the Lord Advocate. In addition, the Parliamentary Commissioner for Administration (the Parliamentary Ombudsman) is a member by virtue of his office. In appointing members, regard is to be had to the need for representation of the interests of persons in Wales.

3. The Scottish Committee of the Council are to consist of two or three members of the Council designated by the Lord Advocate, and three or four non-members of the Council appointed by him. The Parliamentary Ombudsman is also an ex-officio member of the Committee.

4. The Council have 15 members, of whom one is appointed primarily to represent the interests of people in Wales. The Scottish Committee have seven members, of whom three are members of the Council.

5. The principal functions of the Council as laid down in the Tribunals and Inquiries Act 1992 are:

(a) to keep under review the constitution and working of the tribunals specified in Schedule 1 to the Act, and, from time to time, to report on their constitution and working;

(b) to consider and report on matters referred to the Council under the Act with respect to tribunals other than the ordinary courts of law, whether or not specified in Schedule 1 to the Act; and

(c) to consider and report on these matters, or matters the Council may consider to be of special importance, with respect to administrative procedures which involve or may involve the holding of a statutory inquiry by or on behalf of a Minister.

6. The term "statutory inquiry" means (i) an inquiry or hearing held in pursuance of a statutory duty, or (ii) a discretionary inquiry or hearing designated by an order under section 16(2) of the Act. The relevant order now in force is the Tribunals and Inquiries (Discretionary Inquiries) Order 1975 (S.I. 1975/1379) as amended (S.I. 1976/293, S.I. 1983/1287, S.I. 1990/526 and S.I. 1992/2171).

7. The Council must be consulted before procedural rules are made for any tribunal specified in Schedule 1 to the 1992 Act, and on procedural rules made by the Lord Chancellor or the Lord Advocate in connection with statutory inquiries. They must also be consulted before any exemption is granted from the requirement in section 10 of the Act to give reasons for

decisions. They may make general recommendations to Ministers about appointments to membership of the scheduled tribunals.

8. The jurisdiction of the Council extends over the whole of Great Britain but they have no authority to deal with any matter in respect of which the Parliament of Northern Ireland would have power to make laws if the Northern Ireland Constitution Act 1973 had not been passed.

9. The Council are required to make an annual report which must be laid before Parliament and may, at any time, make a special report on their own initiative under (a) or (c) of paragraph 5 above.

10. References to the Council or reports by them are normally made by or to the Lord Chancellor and the Lord Advocate, either both or one or other of them according as the matter in question relates to Great Britain as a whole, to England and Wales or to Scotland.

11. Certain tribunals operating in Scotland, which are specified in Part II of Schedule 1 to the 1992 Act, come under the particular supervision of the Scottish Committee. Before making any reports in regard to these, or on any matter referred by the Lord Advocate, the Council must consult the Scottish Committee. In addition, the Scottish Committee have the right in certain circumstances to report directly to the Lord Advocate.

Appendix E: Tribunal and Inquiry Statistics

(paragraph 3.28)

Tribunals under the general supervision of the Council on Tribunals at 31st July 1998

(The appendix follows the order in which tribunals are listed in Schedule 1 to the Tribunals and Inquiries Act 1992. Figures for the number of tribunals and for the number of cases are supplied to us by the tribunals or their Departments and relate to the calendar year 1997 except where otherwise stated)

PART I - TRIBUNALS UNDER THE DIRECT SUPERVISION OF THE COUNCIL

Category of tribunal	Number of tribunals in each category at 31st December 1997	Number of cases brought forward from 1996	Number of cases received in 1997	Number of cases withdrawn or settled in 1997 (before a hearing was reached)	Number of cases decided in 1997	Number of cases carried forward to 1998
AGRICULTURE						
Agricultural Land Tribunals established under section 73 of the Agriculture Act 1947	7 regional tribunals	379	301	201	79	400
(Welsh figures in brackets)	(1 tribunal in Wales)	(55)	(37)	(39)	(9)	(44)
Agricultural Arbitrators appointed (otherwise than by agreement) under Schedule 11 to the Agricultural Holdings Act 1986 (arbitrators appointed by President of the RICS)	150 Arbitrators on Lord Chancellor's Panel	Not available	772	Not available	Not available	Not available
AIRCRAFT AND SHIPBUILDING INDUSTRIES *Aircraft and Shipbuilding Industries Arbitration Tribunal* established under section 42 of the Aircraft and Shipbuilding Industries Act 1977	Last of cases heard in early 1980s. Although not abolished by legislation, tribunal is not expected to sit further	0	0	0	0	0
ANTARCTICA *Antarctic Act Tribunal* established under Regulation 11 of the Antarctic Regulations 1995	1	0	0	0	0	0
AVIATION *The Civil Aviation Authority* constituted in accordance with section 2 of the Civil Aviation Act 1982 in the exercise of functions prescribed for the purposes of section 7(2) of that Act						
Air Operator Licensing) Route Licensing) TOTAL) Air Transport Licensing)	1	132	251	2	253	98
Air Travel Organisers' Licences:	1	216	1,916	141	1,860	131
Regulation 6 hearings - Air Navigation Order Appeals:	1	4	8	2	7	3
TOTAL:		352	2,175	175	2,120	232
BANKING *Banking Appeal Tribunal* constituted under section 28 of the Banking Act 1987	Tribunal constituted as required	0	0	0	0	0

Category of tribunal	Number of tribunals in each category at 31st December 1997	Number of cases brought forward from 1996	Number of cases received in 1997	Number of cases withdrawn or settled in 1997 (before a hearing was reached)	Number of cases decided in 1997	Number of cases carried forward to 1998
BETTING LEVY *Betting Levy Appeal Tribunal* for England and Wales, established under section 29 of the Betting, Gaming and Lotteries Act 1963 (these figures are for the period April 1996 to March 1997)	1	0	5	1	0	4
BUILDING SOCIETIES *Building Societies Appeal Tribunal* constituted under section 47 of the Building Societies Act 1986	Tribunal constituted as required	0	0	0	0	0
CHILD SUPPORT MAINTENANCE *Child Support Appeal Tribunals* established under section 21 of the Child Support Act 1991 (Scottish figures in brackets)	3,155 (262)	4,024 (270)	8,563 (553)	746 (48)	8,321 (629)	4,266[1] (194)[1]
Child Support Commissioners appointed under section 22 of that Act and any tribunal presided over by such a Commissioner (Scottish figures in brackets)	England and Wales 1 Chief Commissioner, 13 full time Commissioners, Scotland 3 full time Commissioners	92 (12)	248 (11)	7 (2)[2]	186 (12)	147 (9)
CHILDREN'S HOMES, VOLUNTARY HOMES, NURSING HOMES, MENTAL NURSING HOMES AND RESIDENTIAL CARE HOMES *Registered Homes Tribunals* constituted under Part III of the Registered Homes Act 1984	Tribunals constituted as required from panel of 7 Chairmen and 42 expert members	33	62	43	28	24
COMMONS *Commons Commissioners* and assessors appointed under section 17(2) and (3) of the Commons Registration Act 1965	1 part time Chief Commissioner, 1 part time Commissioner	182	456	0	11	627
COPYRIGHT *Copyright Tribunal* constituted under section 145 of the Copyright, Designs and Patents Act 1988	1	25	15	1	0	39
CRIMINAL INJURIES COMPENSATION *Adjudicators* appointed under section 5 of the Criminal Injuries Compensation Act 1995	Constituted as required from Panel of Adjudicators	269[3]	2,012	263	739	1,304[4]
DAIRY PRODUCE QUOTAS *Dairy Produce Quota Tribunal* for England and Wales, constituted under regulation 34(1) of the Dairy Produce Quotas Regulations 1997	The tribunal has been dormant since 1994	0	0	0	0	0

Category of tribunal	Number of tribunals in each category at 31st December 1997	Number of cases brought forward from 1996	Number of cases received in 1997	Number of cases withdrawn or settled in 1997 (before a hearing was reached)	Number of cases decided in 1997	Number of cases carried forward to 1998
DATA PROTECTION						
Data Protection Registrar appointed under section 3 of the Data Protection Act 1984 (these figures are for the period April 1996 to March 1997)						
Applications for registration under the provisions of section 4 of the Act:	0	3,182	28,593	25	30,016	1,734
Complaints (number considered by the Registrar):		95	3,897	1,688	2,137	167
Data Protection Tribunal constituted under section 3 of the Data Protection Act 1984	0	1	2	0	0	3
EDUCATION						
Independent Schools Tribunal constituted under section 47b and Schedule 34 to the Education Act 1996	1	0	0	0	0	0
Education Appeal Committees constituted in accordance with Part I of Schedule 33 to that Act						
England (we understand that appeal statistics are not at present collected from authorities and schools in Wales)						
PRIMARY						
County and Voluntary Controlled:			28,426	9,939	18,454	
Voluntary Aided and Special Agreement:			3,440	702	2,738	
TOTAL PRIMARY:			31,866	10,641	21,192	
SECONDARY						
County and Voluntary Controlled:			25,793	7,864	17,916	
Voluntary Aided and Special Agreement:			4,540	664	3,876	
TOTAL SECONDARY:			30,333	8,528	21,792	
GRAND TOTAL			62,199	19,169	42,984	
Education Appeal Committees for Grant maintained schools constituted for the purposes of paragraph 6(1) of Schedule 23 to that Act						
PRIMARY:			777	152	625	
SECONDARY:			9,688	2,008	7,680	
TOTAL:			10,465	2,160	8,305	
England and Wales *Special Educational Needs Tribunal* constituted under section 333 of that Act	1 national head-quarters with regional tribunals set up as required	666	2,045	965	1,070	676
Registered Inspector of Schools Tribunal: constituted in accordance with Schedule 2 to the Schools Inspections Act 1996	0	0	0	0	0	0

Category of tribunal	Number of tribunals in each category at 31st December 1997	Number of cases brought forward from 1996	Number of cases received in 1997	Number of cases withdrawn or settled in 1997 (before a hearing was reached)	Number of cases decided in 1997	Number of cases carried forward to 1998
EMPLOYMENT *Industrial Tribunals (known as Employment Tribunals as from 1 August 1998)* for England and Wales, established under section 1(1) of the Industrial Tribunals Act 1996	20 Employment Tribunals offices in England and Wales with sittings held in hearing centres in other parts of the country as necessary					
Unfair Dismissal:			34,905	22,956	12,523	
Equal Pay:			1,593	619	159	
Racial Discrimination:		Not	2,213	1,266	789	Not
Sexual Discrimination:		available	2,753	1,939	758	available
Other:			29,888	19,094	10,597	
TOTAL:			71,352	45,874	24,826	
FAIR TRADING *The Director General of Fair Trading* and any member of his staff authorised to exercise functions under paragraph 7 of Schedule 1 to the Fair Trading Act 1973						
Consumer Credit Act 1974:	5	108	121	26	85	118
Estate Agents Act 1979:	5	20	7	6	6	15
FINANCIAL SERVICES *Financial Services Tribunal* established by section 96 of the Financial Services Act 1986	1	0	2	0	0	2
FOOD *Meat Hygiene Appeals Tribunal* constituted in accordance with regulations under Part II of the Food Safety Act 1990	1	4	24	15	10	3
FOREIGN COMPENSATION *Foreign Compensation Commission* established under the Foreign Compensation Act 1950. Currently operating on a "care and maintenance" basis	0	0	0	0	0	0
FORESTRY *Forestry Committees* appointed in England and Wales for the purposes of section 16, 17B, 20, 21 or 25 of the Forestry Act 1967	Tribunal constituted as required	0[5]	0	0	0	0
FRIENDLY SOCIETIES *Friendly Societies Appeal Tribunal* constituted under section 59 of the Friendly Societies Act 1992	Tribunal constituted on an ad hoc basis	0	0	0	0	0

Category of tribunal	Number of tribunals in each category at 31st December 1997	Number of cases brought forward from 1996	Number of cases received in 1997	Number of cases withdrawn or settled in 1997 (before a hearing was reached)	Number of cases decided in 1997	Number of cases carried forward to 1998
IMMIGRATION APPEALS *Immigration Adjudicators* established under section 12 of the Immigration Act 1971 (figures for April 1997 to March 1998)	1 Chief Adjudicator, 34 full time, and 137 part time Adjudicators	30,875	33,927	Included in next column	34,030	30,772
Immigration Appeal Tribunal established under section 12 of the Immigration Act 1971	1 President, 4 Vice-Presidents, 20 part time Legal Chairmen, 28 members	1,624	17,250	Included in next column	15,013	3,861
INDEMNIFICATION OF JUSTICES AND CLERKS *Indemnification of Justices and Clerks* Any person appointed under section 54(6) of the Justices of the Peace Act 1997	Tribunal never convened	0	0	0	0	0
INDUSTRIAL TRAINING LEVY EXEMPTION *Industrial Training Levy Exemption Referees* established by the Industrial Training (Levy Exemption References) Regulations 1974	Referees stood down - role effectively dormant	0	0	0	0	0
INDUSTRY *Arbitration Tribunal* established under Schedule 3 to the Industry Act 1975	Tribunal never convened	0	0	0	0	0
INSOLVENCY PRACTITIONERS *Insolvency Practitioners Tribunal* constituted under section 396 of the Insolvency Act 1986	Tribunal constituted as required	2	1	1	2	0
LAND *Lands Tribunal* constituted under section 1(1)(b) of the Lands Tribunal Act 1949	1					
References:		365	192	0	154	403
Other Matters:		149	211	0	176	184
Rating Appeals:		1,552	167	0	938	781
TOTAL:		2,066	570	0	1,268	1,368
LOCAL TAXATION *Valuation Tribunals* established by regulations under Schedule 11 to the Local Government Finance Act 1988 (figures include estimates for missing returns and are rounded to the nearest thousand in each case, and cover the period April 1997 to March 1998)	56 tribunals in England, and 8 in Wales	451,000[6]	274,000	366,000	68,000	291,000
LONDON BUILDING ACTS *London Building Acts Tribunals* The tribunals of appeal constituted in accordance with section 109, as amended, of the London Building Acts (Amendment) Act 1939	Tribunal constituted as required	1	0	0	0	1

Category of tribunal	Number of tribunals in each category at 31st December 1997	Number of cases brought forward from 1996	Number of cases received in 1997	Number of cases withdrawn or settled in 1997 (before a hearing was reached)	Number of cases decided in 1997	Number of cases carried forward to 1998
MENTAL HEALTH *Mental Health Review Tribunals* constituted under section 65 of the Mental Health Act 1983 (Welsh figures in brackets)	Tribunal within each of 8 Regions in England (1 Tribunal in Wales)					
All cases apart from restricted and assessment cases:	3,776	1,548 (54)	9,258 (461)	4,024 (276)	3,278 (191)	1,598 (48)
Restricted cases:	1,246	414 (19)	1,700 (78)	327 (25)	1,146 (53)	398 (19)
Assessment cases:	2,622	121 (5)	3,988 (206)	1,433 (78)	2,197 (130)	122 (3)
TOTAL: (includes cases where the patient is discharged by a doctor, the Home Office or a court, patients who have absconded, deaths, transfers to other hospitals, remits to prison and invalid applications)	7,644	2,083 (78)	14,946 (745)	5,784 (379)	6,621 (374)	2,118 (70)
MINES AND QUARRIES *Mines and Quarries Tribunal* for the purposes of section 150 of the Mines and Quarries Act 1954	Tribunal never convened	0	0	0	0	0
MISUSE OF DRUGS *Misuse of Drugs Tribunal* in England and Wales constituted under Part I of Schedule 3 to the Misuse of Drugs Act 1971	Tribunal constituted as required	0	0	0	0	0
NATIONAL HEALTH SERVICE *National Health Service Tribunal* constituted under section 46 of the National Health Service Act 1977	5	6	5	4	3	4
Health Authorities established under section 8 of that Act in respect of their functions under the National Health Service (Service Committee and Tribunal) Regulations 1992 or any regulations amending or replacing those regulations	Not available	Not available	Not available	Not available	Not available	Not available
Discipline Committees committees of Health Authorities established under regulation 3 of those regulations or any provision amending or replacing that regulation (Welsh figures in brackets are for the period April 1997 to March 1998)	100 (2)	6	188 (12)	23	46 (1)	125 (11)
NATIONAL LOTTERY *Director General of the National Lottery* in respect of his functions under section 10 of and Schedule 3 to the National Lottery Act 1993, and any member of the Director General's staff authorised under paragraph 4 of Schedule 2 to that Act to exercise any of those functions	0	0	0	0	0	0

Category of tribunal	Number of tribunals in each category at 31st December 1997	Number of cases brought forward from 1996	Number of cases received in 1997	Number of cases withdrawn or settled in 1997 (before a hearing was reached)	Number of cases decided in 1997	Number of cases carried forward to 1998
NATIONAL SAVINGS BANK AND NATIONAL SAVINGS STOCK REGISTER An Adjudicator appointed under section 84 of the Friendly Societies Act 1992	3	11	37	16	22	10
PATENTS, DESIGNS, TRADE MARKS AND SERVICE MARKS *Comptroller-General of Patents, Designs and Trade Marks* and any other officer authorised to exercise the functions of the Comptroller under section 74(1) and 74(4)(c) of the Deregulation and Contracting Out Act 1994						
Patents (based on total number of outstanding inter-partes cases, the Comptroller also heard 19 ex-parte matters):	1	171	74	18	59	168
Designs (includes Design Right/Design , Licence of Right, matters under Copyright, Designs and Patents Act 1988 and Registered Design Act matters):	1	20	19	8	11	20
Trade Marks:	1	7,477	8,295	603	10,287	4,882
TOTAL:		7,668	8,388	629	10,357	5,070
PENSIONS *Pensions Appeal Tribunals* for England and Wales constituted under section 8 of the War Pensions (Administrative Provisions) Act 1919 or under the Pensions Appeal Tribunals Act 1943	Ad hoc President (part time), 18 legal Chairman, 61 medical members, 22 of whom can sit as medical Chairman, 44 service members					
Entitlement appeals (to determine whether a person is entitled to an award):	944	4,911	3,647	3,326	556	4,676
Assessment appeals (against assessed degree of disablement, period of interim assessment, or making of a final settlement):	823	7,071	4,220	4,074	633	6,584
TOTAL:	1,767	11,982	7,867	7,400	1,189	11,260
Fire Service Pensions Appeal Tribunals constituted in accordance with a scheme in force under section 26 of the Fire Services Act 1947	Tribunal last convened in 1974	0	0	0	0	0
Pensions Compensation Board established by section 78 of the Pensions Act 1995	0	0	0	0	0	0
Occupational Pensions Regulatory Authority established by section 1 of the Pensions Act 1995	1	0	2	0	1	1
Pensions Ombudsman established under Part X of the Pension Schemes Act 1993 (figures are for the period April 1997 to March 1998)	0	0	18	6	12	0
Police Pensions Appeal Tribunals appointed under regulations under section 1 of the Police Pensions Act 1976:	Tribunal last convened in 1974	0	0	0	0	0

Category of tribunal	Number of tribunals in each category at 31st December 1997	Number of cases brought forward from 1996	Number of cases received in 1997	Number of cases withdrawn or settled in 1997 (before a hearing was reached)	Number of cases decided in 1997	Number of cases carried forward to 1998
PLANT VARIETIES						
Controller of Plant Variety Rights and any officer authorised to exercise the functions of the Controller under regulation 13 of the Plant Breeders Rights Regulations 1978	0	0	0	0	0	0
Plant Varieties and Seeds Tribunal established by section 10 of the Plant Varieties and Seeds Act 1964	0	0	0	0	0	0
RENTS						
Leasehold Valuation Tribunals under section 142 of the Housing Act 1980	Tribunals and Committees are appointed ad hoc from 9 Regional Rent Assessment Panels in England and 1 in Wales	741	1,360	435	205	1,461
Rent Tribunal under section 72 of the Housing Act 1980		5	26	7	23	1
Rent Assessment Committees constituted in accordance with Schedule 10 to the Rent Act 1977		3,041	12,555	1,467	8,702	5,427
Hearings under section 10 of the Rent Act 1977		369	1,398	655	703	409
Hearings under sections 14 or 22 of the Housing Act 1988 (includes cases where Panel had no jurisdiction - dealt with as non-determination under section 22 of the Act):						
TOTAL:		4,156	15,339	2,564	9,633	7,298
RESERVE FORCES						
Reinstatement Committees appointed under paragraph 1 of Schedule 2 to the Reserve Forces (Safeguard of Employment) Act 1985	The Committees and Umpires are currently in abeyance	0	0	0	0	0
Reinstatement Umpires appointed under paragraph 5 of Schedule 2 to the Reserve Forces (Safeguard of Employment) Act 1985		0	0	0	0	0
Reserve Forces Appeal Tribunals constituted under Part IX of the Reserve Forces Act 1996		0	0	0	0	0
REVENUE						
General Commissioners of Income Tax acting under section 2 of the Taxes Management Act 1970 for any Division in England, Wales Scotland and Northern Ireland, (figures given are not comparable with earlier estimates of the number of delay or contentious cases listed in England and Wales, but provide a more meaningful indication of Commissioners' actual workload) (figure relates to number of appeals heard on which substantive decisions were made but does not necessarily imply that appeal was concluded; it includes 89,427 (83,177 not including Scotland) cases concluded at hearings not attended by appellants or their representatives and 12,039 (10,341 not including Scotland) cases concluded where appellants or their representatives did attend)	366 divisions in England, 55 in Scotland, 38 in Wales, and 5 in Northern Ireland, sitting for 8,141.40 hours (7,355.25 not including Scotland)	Not available	Not available	Not available	208,824[7]	Not available

(continued overpage)

Category of tribunal	Number of tribunals in each category at 31st December 1997	Number of cases brought forward from 1996	Number of cases received in 1997	Number of cases withdrawn or settled in 1997 (before a hearing was reached)	Number of cases decided in 1997	Number of cases carried forward to 1998
REVENUE *(continued)*						
Figures for Scotland: sitting for 786.15 hours, 17,278 cases decided in 1997, 6,250 where not attended by appellants or representatives, 1,698 where appellants or representatives did attend						
Special Commissioners of Income Tax appointed under section 4 of the Taxes Management Act 1970	Tribunal sits mainly in London but occasionally elsewhere when necessary. Comprises a Presiding Special Commissioner, 2 full time Special Commissioners, 11 deputy Special Commissioners					
Figures for the United Kingdom						
Points of Principle:		97	121	42	58	118
Delays:		63	28	30	0	61
Applications:		12	40	13	25	14
TOTAL:		172	189	85	83	193
Tribunals for the purposes of section 706 of the Income and Corporation Taxes Act 1988	1	0	2	1	0	1
ROAD TRAFFIC						
Traffic Commissioners for any area constituted for the purposes of the Public Passenger Vehicles Act 1981 (figures relate to the period April 1996 to March 1997)	1 Senior Commissioner and 5 other Commissioners serving 8 regional Traffic Areas					
Applications for Public Vehicle Operator's Licence		30	974	20	916	58
Applications for Goods Vehicle Operator's Licence			10,121	815	9,971	665
Driver's Licence cases (PSV/Goods)		1	17,730	0	17,728	3
Parking Adjudicators appointed under section 73(3) of the Road Traffic Act 1991	1	3,777[8]	35,048	10,327	24,356	4,142
SEA FISH (CONSERVATION)						
Sea Fish Licence Tribunal established under section 4AA of the Sea Fish (Conservation) Act 1967	Tribunal not yet convened	0	0	0	0	0
SOCIAL SECURITY						
Social Security Appeal Tribunals constituted under section 41 of the Social Security Administration Act 1992 (figures are for Great Britain)	42,374	83,781	263,009	39,102	229,700	116,459[1]
(Scottish figures in brackets)	(4,324)	(11,348)	(31,217)	(1,473)	(21,623)	(14,208)[1]
Disability Appeal Tribunals constituted under section 43 of that Act (figures are for Great Britain)	14,102	18,854	54,575	1,481	44,361	38,304[1]
(Scottish figures in brackets)	(2,518)	(3,872)	(9,189)	(237)	(7,409)	(5,698)[1]

(continued overpage)

Category of tribunal	Number of tribunals in each category at 31st December 1997	Number of cases brought forward from 1996	Number of cases received in 1997	Number of cases withdrawn or settled in 1997 (before a hearing was reached)	Number of cases decided in 1997	Number of cases carried forward to 1998
SOCIAL SECURITY *(continued)*						
Medical Appeal Tribunals constituted under section 50 of that Act	4,203	8,116	17,797	996	15,733	10,457[1]
(Scottish figures in brackets)	(455)	(939)	(2,389)	(0)	(1,419)	(2,074)[1]
Social Security Commissioners A Commissioner appointed under section 52 of that Act and any tribunal presided over by a Commissioner so appointed	England & Wales: 1 Chief Commissioner, 13 full time Commissioners. Scotland: 3 full time Commissioners					
England and Wales						
Applications:		2,491[9]	4,843	37	4,721	2,576
Appeals:		4,858[9]	3,400	284	3,926	4,048
Scotland (figures in brackets):		(476)[9]	(873)	(81)[2]	(874)	(394)
TOTAL:		7,825	9,116	402	9,521	7,018
TRANSPORT *Transport Tribunal* constituted as provided in Schedule 4 to the Transport Act 1985	1	13	42	14	27	14
VACCINE DAMAGE *Vaccine Damage Tribunals* constituted under section 4 of the Vaccine Damage Payments Act 1979	9	36	21	3	24	33[1]
VAT AND DUTIES *VAT and Duties Tribunals* for England and Wales established under Schedule 12 to the Value Added Tax Act 1994	Permanent hearing centres in London and Manchester. Tribunals also sit at other provincial locations as necessary. In England and Wales, tribunals constituted from a President, 3 full time Chairmen, and 29 part time Chairmen	9,107[10]	3,259	2,204	860	9,302
WIRELESS TELEGRAPHY *Wireless Telegraphy Tribunal* established under section 9 of the Wireless Telegraphy Act 1949	Tribunal never convened	0	0	0	0	0

FOOTNOTES

Child Support Appeal Tribunals, Disability Appeal Tribunals, Medical Appeal Tribunals, Social Security Appeal Tribunals, Vaccine Damage Tribunals

[1] The carried forward figure at the end of the year is not calculated by adding the brought forward figure to the number of appeals received and subtracting the number of cases cleared. It is calculated by combining the number of cases at various stages of the appeal process together.

Child Support Commissioners, Social Security Commissioners

[2] The majority of cases are decided on the basis of the appeal papers ie. paper hearings. Oral hearings are arranged in only about 5% of cases. This figure relates only to withdrawals.

Criminal Injuries Compensation

[3] The figure for the number of cases carried forward to 1997 given in the 1996/97 Annual Report should have been 269 and not 209.

[4] The figure for the number of cases carried forward to 1998 does not balance because in 1996 there was a manual count which was not accurate.

Forestry Committees

[5] The figures for the number of cases brought forward from 1996 given in the 1996/7 Annual Report should have been 0 and not 1.

Local Taxation

[6] The figure for the number of cases brought forward from 1996 given in the 1996/97 Annual Report should have been 451,000 and not 448,000. The figures provided in this Annual Report are provisional figures.

General Commissioners of Income Tax

[7] Returns were received from all 464 divisions, therefore the number of cases decided in 1997 is significantly higher than in the previous year.

Parking Adjudicators

[8] The figures for the number of cases brought forward from 1996 given in the 1996/97 Annual Report should have been 3,777 and not 3,421.

Social Security Commissioners

[9] The figures carried forward from 1996 differ from the previous report as a manual file count was conducted on the 31 December 1996.

VAT and Duties Tribunals

[10] The figure for the number of cases brought forward from 1996 should be 9,107 and not 9,667 because they now exclude figures for Scotland.

PART II - TRIBUNALS UNDER THE SUPERVISION OF THE SCOTTISH COMMITTEE OF THE COUNCIL

Category of tribunal	Number of tribunals in each category at 31st December 1997	Number of cases brought forward from 1996	Number of cases received in 1997	Number of cases withdrawn or settled in 1997 (before a hearing was reached)	Number of cases decided in 1997	Number of cases carried forward to 1998
AGRICULTURE *Agricultural Arbiters* appointed, otherwise than by agreement, under section 61 of, or Schedule 7 to, the Agriculture Holdings (Scotland) Act 1991	224	158	66	45	10	169
BETTING LEVY *Betting Levy Appeal Tribunal for Scotland* established under section 29 of the Betting, Gaming and Lotteries Act 1963 (figures are for the period April 1995 to March 1996)	1	0	0	0	0	0
CROFTING *Crofters Commission* constituted under section 1 of the Crofters (Scotland) Act 1993	1	225	673	36	649	213
DAIRY PRODUCE QUOTAS *Dairy Produce Quota Tribunal for Scotland* constituted under regulation 34 of and Schedule 6 to the Dairy Produce Quotas Regulations 1997	Tribunal constituted as required	0	0	0	0	0
EDUCATION *Independent Schools Tribunal* constituted under section 100 and 103 of, and Schedule 2 to, the Education (Scotland) Act 1980	Tribunal constituted as required	0	0	0	0	0
Education Appeal Committees set up under section 28D of the Education (Scotland) Act 1980		37	756	214	535	7
Self-Governing Schools constituted by virtue of section 7 of, and paragraph 2(b) of Part II of Schedule 1 to, the Self-Governing Schools etc. (Scotland) Act 1989	0	0	0	0	0	0
EMPLOYMENT *Industrial Tribunals for Scotland* established under section 128 of the Employment Protection (Consolidation) Act 1978	Tribunals sit at 4 Regional Offices in Scotland and at hearing centres in other parts of the country as necessary					
Unfair Dismissal:			3,051	1,780	861	
Equal Pay:			25	30	10	
Racial Discrimination:		Not	53	23	29	Not
Sexual Discrimination:		available	251	163	59	available
Other:			3,132	1,485	828	
TOTAL:			6,512	3,481	1,787	
FOOD *Meat Hygiene Appeal Tribunals* constituted under section 26 of the Food Safety Act 1990	Tribunals constituted as required	0	0	0	0	0

Category of tribunal	Number of tribunals in each category at 31st December 1997	Number of cases brought forward from 1996	Number of cases received in 1997	Number of cases withdrawn or settled in 1997 (before a hearing was reached)	Number of cases decided in 1997	Number of cases carried forward to 1998
FORESTRY *Forestry Committees* appointed in Scotland for the purposes of sections 16, 17B, 20, 21 or 25 of the Forestry Act 1967	Tribunal never convened	0	0	0	0	0
LAND *Lands Tribunal for Scotland* constituted under section 1(1)(a) of the Lands Tribunal Act 1949	1	103[1]	148	53	51	147
MISUSE OF DRUGS *Misuse of Drugs Tribunal for Scotland* constituted under Part I of Schedule 3 to the Misuse of Drugs Act 1971	Tribunal never convened	0	0	0	0	0
NATIONAL HEALTH SERVICE *National Health Service Health Boards and Joint Committees of these Boards* constituted under section 2 of the National Health Service (Scotland) Act 1978	15	16	47	12	47	4
Service Committees and Discipline Committees of Health Board or a Joint Committee of Health Boards* being committees constituted in accordance with regulations made under the National Health Service(Scotland) Act 1978	75					
National Health Service Tribunal constituted under section 29 of the National Health Service (Scotland) Act 1978	1	0	0	0	0	0
National Appeal Panel convened in accordance with Part I of Schedule 4 to the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995	1	7[2]	18[2]	19	3[2]	3[2]
PENSIONS *Pensions Appeal Tribunals for Scotland* constituted under section 8 of the War Pensions (Administrative Provisions) Act 1919 or under the Pensions Appeal Tribunal Act 1943						
Entitlement:	1	282	399	47	411	223
Assessment:	1	536	722	106	630	522
TOTAL:	2	818	1,121	153	1,041	745
Police Pensions Appeal Tribunals appointed under regulations made under section 1 of the Police Pensions Act 1976	Tribunal constituted as required	0	0	0	0	0
POLICE *The Police Appeals Tribunal for Scotland* established under section 55 of the Police and Magistrates Courts Act 1994	1	0	1	0	0	1

***NHS Service Committees and Discipline Committees**
The new NHS Discipline Committees came into force on 1st April 1996. Anyone appealing to a Health Board prior to that date would have their case considered by a Service Committee. As some areas were not actioned by Service Committees until 1997 there is an overlap between the two systems in this year's statistics. All Service Committee appeals have now been finalised.

Category of tribunal	Number of tribunals in each category at 31st December 1997	Number of cases brought forward from 1996	Number of cases received in 1997	Number of cases withdrawn or settled in 1997 (before a hearing was reached)	Number of cases decided in 1997	Number of cases carried forward to 1998
RATES *Valuation Appeal Committees* constituted in accordance with section 29 of the Local Government (Scotland) Act 1994 and sections 81 and 82 of the Local Government Finance Act 1992 (figures are for the period April 1997 to March 1998)	Committees appointed from 12 panels	42,525	5,131	39,550	1,126	6,980
RENTS *Rent Assessment Committees* constituted in accordance with Schedule 4 to the Rent (Scotland) Act 1984	Committees appointed as necessary from members of the Rent Assessment Panel for Scotland	185	488	85	524	64
SOCIAL WORK *Children's Hearings* constituted and arranged in pursuance of the Children (Scotland) Act 1995 (figures are for 1996)	9,167[3]	Not available	46,497[4]	33,362[5]	13,135[6]	Not available
Residential and other Establishments Registrations Any appeal tribunal established under Schedule 5 to the Social Work (Scotland) Act 1968	4	2[7]	2	2	0	2
TAXI FARES *Traffic Commissioners* appointed under the Public Passenger Vehicles Act 1981 in respect of functions concerning taxi fares under section 18 of the Civic Government (Scotland) Act 1982	1	1[8]	2	0	3	0
VAT AND DUTIES TRIBUNALS *VAT and Duties Tribunals for Scotland* established under schedule 12 of the Value Added Tax Act 1994	Tribunal sits mainly in Edinburgh. Consists of 1 Vice President and 3 part time Chairmen	620	256	141	97	638

FOOTNOTES

Land

[1] The figure for the number of cases brought forward from 1996 given in the 1996/97 Annual Report should have been 103 and not 104.

NHS National Appeal Panel

[2] The statistics cover the period from September 1996 to December 1997, in terms of when the appeals were received. In terms of when appeals were heard they cover the period from February 1997 to April 1998. We were advised that the reason for the figures covering such an odd timespan is due to the lack of a Secretary for the NHS panel during most of 1997.

Children's Hearings

[3] These are the number of Children's hearings that reached a disposal.

[4] The figure for cases received in 1996/97 relates to referrals received by Reporters for investigation and decision.

[5] The figure for cases withdrawn or settled refers to the referrals on which the Reporters decision was other than to proceed to a Children's hearing.

[6] The figure for number of cases decided refers to the number of referrals on which decisions were reached by Children's meetings

Residential and other Establishments Registrations

[7] The figure for the number of cases brought forward from 1996 given in the 1996/97 Annual Report should have been 2 and not 3.

Traffic Commissioners

[8] The figure for the number of cases brought forward from 1996 given in the 1996/97 Annual Report should have been 1 and not 0.

PART III - SOME INQUIRIES

Type of Inquiry	Number of full and part time Inspectors in each category at 31st December 1997	Number of appeals brought forward from 1996/97	Number of appeals received in 1997/98	Number of appeals withdrawn in 1997/98	Number of appeals decided by Secretary of State in 1997/98	Number of appeals decided by Inspectors in 1997/98	Number of appeals carried forward to 1998/99
PLANNING							
ENGLAND							
Planning Appeals							
under section 78 of the Town and Country Planning Act 1990 (figures are for the financial year 1997/98)	229 full time, 141 part time Inspectors undertaking various types of appeals under the jurisdiction of the Planning Inspectorate	6,879	14,182	2,246	125	13,051	5,639
Inquiry Method:					)	)	
Written Representations:					) Not	) Not	
Hearing:					) available	) available	
Enforcement Appeals							
under section 174 of the Town and Country Planning Act 1990 (figures are for the financial year 1997/98)		3,402	3,930	1,279	50	3,147	2,856
Inquiry Method:					)	)	
Written Representations:					) Not	) Not	
Hearings:					) available	) available	
Local Plans	15 part time						
Inquiries opened:			48				
Inquiries closed:						54	
Reports issued:						71	
WALES							
Planning Appeals							
under section 78 of the Town and Country Planning Act 1990 (figures are for the financial year 1997/98)	10 full time 3 part time	264	714	116			281
Inquiry Method:					1	31	
Written Representations:					3	438	
Hearings:					0	108	
Enforcement Appeals							
under section 174 of the Town and Country Planning Act 1990 (figures are for the financial year 1997/98)	9 full time	93	190	68			123
Inquiry Method:					1	32	
Written Representations:					2	52	
Hearings:					0	5	
PUBLIC PATHS							
ENGLAND							
Public Path Orders							
under sections 26, 118 and 119 of the Highways Act 1980	54 part time	105[1]	146	0	5	144	102
Inquiry Method:		59	65		0	80	44
Written Representations:		43	59		5	64	33
Undecided:		3	22				25
under sections 257 and 258 of the Town and Country Planning Act 1990	54 part time	20[1]	52	0	2	41	29
Inquiry Method:		13	32		2	26	17
Written Representations:		5	16		0	15	6
Undecided:		2	4				6

(continued overpage)

Type of Inquiry	Number of full and part time Inspectors in each category at 31st December 1997	Number of appeals brought forward from 1996/97	Number of appeals received in 1997/98	Number of appeals withdrawn in 1997/98	Number of appeals decided by Secretary of State in 1997/98	Number of appeals decided by Inspectors in 1997/98	Number of appeals carried forward to 1998/99
PUBLIC PATHS *(continued)*							
Definitive Map Orders under the Wildlife and Countryside Act 1981	54 part time	151[1]	148	0	0	115	184
Inquiry Method:		136	112		0	97	151
Written Representations:		9	19		0	18	10
Undecided:		6	17				23
OTHER INQUIRIES							
ENGLAND AND WALES *Inquiries under section 17(4) of the Social Security Administration Act 1992* enabling the determination of certain employment matters (figures are for the period 6 April 1997 to 5 April 1998)							
Insurance Cases		101	183	9			171
Inquiry Method:					25		
Written Representations:					79		
Contribution Cases		216	413	19			136
Inquiry Method:							
Written Representations:					474		
TOTAL:		317	596	28	578		307
Inquiry Method:					25		
Written Representations:					553		
Inquiries under regulation 10 of, and Schedule 3 to, the National Health Service (Service Committees and Tribunal) Regulations 1992 being appeals to the Secretary of State from decisions of Family Health Service Authorities or Health Authorities (Welsh figures are in brackets and relate to the period April 1997 to March 1998)	Secretary of State appeals are delegated to the Family Health Services Appeal Authority	(12)	(2)		(7)		(3)
Regulation 9 Oral Hearings:		1	29	1	16		13
Regulation 10 Oral Hearings:	0	)	)	5	165	0	)
Written Representations:	0	) 288[2]	) 211[2]	7	195	0	) 127[2]
Schedule 3 Applications for Consent:	0	1	7	0	8	0	0
Appeals where Consent not sought:	0	8	9	0	17	0	0
Inquiries under the National Health Service (Pharmaceutical Services) Regulations 1992 as amended being appeals to the Secretary of State from decisions of Family Health Service Authorities or Health Authorities							
Regulation 8 (10) Oral Hearings:	0	)	)	)	89	0	)
Written Representations:		)	) 463[2]	) 18	338		) 149[2]
Regulation 10 (5) Oral Hearings:		) 140[3]	)	)	6	0	)
Written Representations:	0	)	) 7[2]	) 0	0		) 2[2]
Regulation 13 (8) Oral Hearings:		)	)	)	1	0	)
Written Representations:	0	)	) 21[2]	) 1	20		) 7[2]

Type of Inquiry	Number of full and part time Inspectors in each category at 31st December 1997	Number of appeals brought forward from 1996/97	Number of appeals received in 1997/98	Number of appeals withdrawn in 1997/98	Number of appeals decided by Secretary of State in 1997/98	Number of appeals decided by Inspectors in 1997/98	Number of appeals carried forward to 1998/99
Appeals to the Secretary of State from determinations of the Director General of Fair Trading							
Consumer Credit Act 1974	27 part time	2	3	1	3		1
Estate Agents Act 1979	28 part time (persons appointed by the Secretary of State to hear appeals)	0	1	0	0		1

FOOTNOTES

Public Paths

[1] The figure for the number of appeals brought forward from 1997/98 given in the 96/97 Annual Report differs from the figures for number of appeals brought forward from 1996/97. This is because of a change of computer database.

Inquiries under regulation 10 of, and Schedule 3 to, the National Health Service (Service Committees and Tribunal) Regulations 1992
Inquiries under the National Health Service (Pharmaceutical Services) Regulations 1992

[2] It is not possible to say whether a case is an oral hearing case until it has been completed because the decision to hold an oral hearing may take place at different stages during the processing of the case.

Inquiries under the National Health Service (Pharmaceutical Services) Regulations 1992

[3] Last year Pharmacy figures were not broken down by case types. This resulted in 3 cases not dealt with under the above Regulations being included in the figure. The figure for the number of cases carried forward to 1997 given in the 1996/97 Annual Report should have been 140 and not 143.

Appendix F: The Council's previous Annual and Special Reports

(paragraph 3.28)

Annual Reports

1959	(S.O. Code No. 39-81-1)	1978-79	(H.C. 359)	
1960	(S.O. Code No. 39-81-2)	1979-80	(H.C. 246)	
1961	(S.O. Code No. 39-81-3)	1980-81	(H.C. 89)	
1962	(S.O. Code No. 39-81-4-65)	1981-82	(H.C. 64)	
1963	(S.O. Code No. 39-81-5-64)	1982-83	(H.C. 129)	
1964	(S.O. Code No. 39-81-6-65)	1983-84	(H.C. 42)	
1965	(S.O. Code No. 39-81-7-66)	1984-85	(H.C. 54)	
1966	(SBN 11-390007-4)	1985-86	(H.C. 42)	
1967	(H.C. 316)	1986-87	(H.C. 234)	
1968	(H.C. 272)	1987-88	(H.C. 102)	
1969	(H.C. 72)	1988-89	(H.C. 114)	
1970-71	(H.C. 26)	1989-90	(H.C. 64)	
1971-72	(H.C. 13)	1990-91	(H.C. 97)	
1972-73	(H.C. 82)	1991-92	(H.C. 316)	
1973-74	(H.C. 289)	1992-93	(H.C. 78)	
1974-75	(H.C. 679)	1993-94	(H.C. 22)	
1975-76	(H.C. 236)	1994-95	(H.C. 64)	£15.20
1976-77	(H.C. 108)	1995-96	(H.C. 114)	£19.50
1977-78	(H.C. 74)	1996-97	(H.C. 376)	£18.10

Special Reports

Recommendations arising from the "Chalkpit" case (handling of new factual evidence after a public inquiry has ended) - 1962 (Appendix D to the Council's Annual Report for 1961)

The position of "third parties" at Planning Appeal Inquiries - 1962 - Cm 1787

The Award of Costs at Statutory Inquiries - 1964 - Cm 2471

The Packington Estate, Islington, Public Inquiry - 1966 (Appendix A to the Council's Annual Report for 1965)

Stansted Airport - 1968 - Cm 3559 (also printed as Appendix A to the Council's Annual Report for 1967)

The Functions of the Council on Tribunals - 1980 - Cm 7805

Social Security - Abolition of independent tribunals under the proposed Social Fund - 1986 - Cm 9722

Model Rules of Procedure for Tribunals - 1991 - Cm 1434, £13.70

Tribunals: their Organisation and Independence - 1997 - Cm 3744 (Appendix A to the Council's Annual Report for 1996-97), £4.40

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