Transforming Public Services: Complaints, Redress and Tribunals

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Foreword

The Department for Constitutional Affairs was created to drive forward the reform and improvement of the justice system, to deliver better services for the public and to reform and safeguard the constitution so that it serves the public effectively. It is our task to ensure that the faith the public have in government is improved. Few things matter more to people than their ability to obtain justice in their dealings with the State and in their workplace but, as this White Paper shows, the institutions which are there to safeguard justice in administration and in the workplace lack systematic design and are poorly organised. This White Paper takes forward the proposals for the reform of Tribunals set out in Sir Andrew Leggatt's Report. Tribunals matter. More people go to tribunals than go to court and for many they may be their only contact with the justice system.

But this White Paper goes wider than this. The public do not want to go to a Tribunal, they want their complaint or dispute resolved quickly and fairly. The White Paper therefore looks at the whole issue of dispute resolution between citizen and State and in the workplace and explores how better to deliver resolution and fairness as part of our public sector reform programme.

This White Paper deliberately takes a bold approach. It explains the context in which we seek reform. It sets out what we believe we should seek to achieve. And it is an invitation to all those involved in redress – judges, officials, lawyers, advice workers – to work together to create a new organisation and a new approach which genuinely meets the community's needs.

The Right Honourable The Lord Falconer of Thoroton
Secretary of State for Constitutional Affairs and Lord Chancellor

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1 Introduction

"We have reached a crucial stage in the reform of Britain's public services. Together we are working to ensure that we can provide services which are not only universal, but also genuinely treat people as individuals, offering them the choice and quality of service they have the right to expect."

Tony Blair, from the foreword to *Leading from the Front Line*[1]

1.1 This White Paper is about improving public services and improving access to justice – administrative justice and justice in the workplace.

Administrative justice

1.2 A modern democratic state affects the lives of individuals in many ways. It intervenes to protect the vulnerable and to regulate markets. And there are areas where it has to deal directly with the rights and obligations of individuals and businesses, areas which can affect any of us, such as taxation, benefits and immigration status.

1.3 In a democracy the framework within which we all live is set by democratic institutions acting in the public interest. But where State institutions do not just set a framework but make decisions about the rights and obligations of individuals, the State also has an important duty towards that individual. Central, devolved and local government make millions of such decisions every year. What if government gets it wrong? What if the individual feels aggrieved by the decision? What if the individual does not realise that government has got it wrong? Each of us has the right to expect that State institutions will make the right decisions about our individual circumstances.

1.4 The overwhelming majority of these decisions are taken by public officials, usually operating as part of a government department or State agency. Their job is to get those decisions about individuals right. The job of those who organise and lead departments and agencies is to establish, maintain and constantly improve the systems which will enable the individual decision-makers to get the decisions right.

1.5 No system will ever be perfect. There will always be errors and complaints. There will always be uncertainties about how the law should be applied to the circumstances of individuals. There will often be gaps in knowledge and understanding about an individual's circumstances. We are all entitled to receive correct decisions on our personal circumstances; where a mistake occurs we are entitled to complain and to have the mistake put right with the minimum of difficulty; where there is uncertainty we are entitled to expect a quick resolution of the issue; and we are entitled to expect that where things have gone wrong the system will learn from the problem and will do better in the future.

1.6 This is the sphere of administrative justice. It embraces not just courts and tribunals but the millions of decisions taken by thousands of civil servants and other officials. So, while much of this White Paper is about institutions which provide redress to individuals who seek to reverse a decision, from the point of view of a user or potential user the context is much broader.

1.7 A good service delivery organisation must be designed with these legitimate needs of the users in mind. To make this a reality the system has to have the following features:

- the decision-making system must be designed to minimise errors and uncertainty;

[1] Published by the Office of Public Service Reform, October 2003. www.pm.gov.uk

- the individual must be able to detect when something has gone wrong;
- the process for putting things right or removing uncertainty must be proportionate – that is, there should be no disproportionate barriers to users in terms of cost, speed or complexity, but misconceived or trivial complaints should be identified and rooted out quickly;
- those with the power to correct a decision get things right; and
- changes feed back into the decision making system so that there is less error and uncertainty in the future;

1.8 Despite significant improvements in a range of tribunals and departments the Government does not believe that set against these standards the existing systems for redress provided by central government are as successful as they could or should be. This is further explored in Chapters 3 to 5. We believe that as part of public sector reform the public is entitled to a better service.

Justice in the workplace

1.9 In the modern world of work, employees are entitled to fair and decent standards in the workplace. They are entitled to protection against unfair dismissal and discrimination. Their rights to a minimum wage, to maternity leave and to join a trade union have to be protected. It is the duty of the State to put in place machinery to enforce these rights and to provide ways in which employees and employers can resolve any disputes about them.

1.10 Many of these disputes can be successfully resolved in the workplace, through formal and informal means. This is by far the best way of resolving these disputes. Where this is not successful there can be assistance from mediation services and the Advisory Conciliation and Arbitration Service (Acas) who successfully conciliate some 70% of employment tribunal claims. But ultimately there may have to be a judicial determination. This is the role of the employment tribunal system, which needs to be:

- even-handed and responsive to the needs of its users;
- accessible and understandable;
- as fast as reasonably practicable;
- reliable, consistent and dependable; and
- properly resourced and organised in an accountable fashion.

1.11 Disputes over justice in the workplace differ from administrative justice disputes because they are party vs party rather than individual or business vs State. Their separate requirements are considered at more length in Chapter 8. But there is a common aim: justice.

The Leggatt Review and beyond

1.12 In May 2000 the then Lord Chancellor, Lord Irvine of Lairg, appointed Sir Andrew Leggatt to undertake a review of one part of the justice landscape, the web of tribunals which has grown up over the years primarily to provide a right of appeal against certain decisions by State agencies but also to deal with employment issues and some other disputes. His report – *Tribunals for Users – One System, One Service* – was published in August 2001 and gave a picture of an incoherent and inefficient set of institutions which, despite the efforts of the thousands of people who work in tribunals, provided a service to the public which was well short of what people are entitled to expect and what can be achieved. Sir Andrew set out a convincing case for change and this White Paper acts as a response to his report. But we do not believe that tribunal reform can or should stand alone. What matters to people is the quality and responsiveness of the system as a whole. So this White Paper is also about improving the whole end to end process for administrative justice. This has important implications for the unified tribunal system which he recommended, and our vision for that system is therefore different from, but, we believe, compatible with his.

1.13 The Department for Constitutional Affairs' five year strategy is organised around four key elements:

- developing **policies that help empower citizens** and communities to manage their own problems, protecting them from crime and anti-social behaviour, and narrowing the justice gap;
- moving out of courts and tribunals disputes that could be resolved elsewhere through better use of **education, information, advice** and **proportionate dispute resolution**;
- **changing radically the way we deliver services** so that the courts, tribunals, legal services and constitutional arrangements are fit for purpose and cost effective; and
- **re-shaping the DCA's organisation and infrastructure** so that it is aligned structurally to meet the needs of the public and works well with the rest of government.

1.14 This White Paper illustrates the application of this strategy and the principles of public service reform to administrative justice and to justice in the workplace. All strands are represented. It is not just about organisation. We accept Sir Andrew Leggatt's key recommendation that tribunals provided by central government should be brought together into a unified system within what is now the Department for Constitutional Affairs. We believe that this will be more effective and efficient, and will firmly embed the principle of independence. But we see this new body as much more than a federation of existing tribunals. This is a new organisation and a new type of organisation. It will have two central pillars: administrative justice appeals, and employment cases. Its task, together with a transformed Council on Tribunals, will not be just to process cases according to law. Its mission will be to help to prevent and resolve disputes, using any appropriate method and working with its partners in and out of government, and to help to improve administrative justice and justice in the workplace, so that the need for disputes is reduced.

1.15 In the remainder of this White Paper we set out, in the context of DCA's five year strategy, what government needs to do in order to improve services, how we are creating the new, unified organisation covering the existing work of tribunals, how we see that organisation working and where we would hope to be at the end of that five year period.

2 Proportionate Dispute Resolution

2.1 The proposals set out in this White Paper are a major early step in the wider strategy we are developing to transform civil and administrative justice and the way that people deal with legal problems and disputes.

2.2 Our strategy turns on its head the Department's traditional emphasis first on courts, judges and court procedure, and second on legal aid to pay mainly for litigation lawyers. It starts instead with the real world problems people face. The aim is to develop a range of policies and services that, so far as possible, will help people to avoid problems and legal disputes in the first place; and where they cannot, provides tailored solutions to resolve the dispute as quickly and cost-effectively as possible. It can be summed up as **'Proportionate Dispute Resolution'**.

2.3 We want to:

- minimise the risk of people facing legal problems by ensuring that the framework of law defining people's rights and responsibilities is as fair, simple and clear as possible, and that State agencies, administering systems like tax and benefits, make better decisions and give clearer explanations;
- improve people's understanding of their rights and responsibilities, and the information available to them about what they can do and where they can go for help when problems do arise. This will help people to decide how to deal with the problem themselves if they can, and ensure they get the advice and other services they need if they cannot;
- ensure that people have ready access to early and appropriate advice and assistance when they need it, so that problems can be solved and potential disputes nipped in the bud long before they escalate into formal legal proceedings;
- promote the development of a range of tailored dispute resolution services, so that different types of dispute can be resolved fairly, quickly, efficiently and effectively, without recourse to the expense and formality of courts and tribunals where this is not necessary;
- but also deliver cost-effective court and tribunal services, that are better targeted on those cases where a hearing is the best option for resolving the dispute or enforcing the outcome.

2.4 'Civil and administrative justice' covers a very wide and varied range of issues and problems. And at the core of our vision is the idea that policies and services must be tailored to the particular needs of people in different contexts, moving away from the limited flexibility of the existing court and legal aid systems. Much of this White Paper is about realising that vision in the field of administrative justice. But other major areas will each in turn need to be the subject of detailed analysis and research in order to develop specific proposals. We are currently considering the areas of debt and domestic violence and hope to publish consultation papers later this year. And the Law Commission will be looking at housing adjudication issues in a similar way.

2.5 All these analyses will start by considering:

- the types of problems and disputes people face, and what outcomes they want to achieve;
- the various options available to avoid or resolve disputes; and
- the effectiveness of different dispute resolution options in addressing peoples' needs, particularly identifying any gaps in their provision.

What do people want?

2.6 The outcome that people are looking for will vary considerably from case to case and person to person. A key question will be the extent to which people are looking (just) for a legal remedy, like an award of a disability benefit. Or whether they might really be seeking something else, like an apology or a clear explanation.

2.7 It is also important to consider what people want in terms of the processes they go through. This may well involve striking a balance between competing factors. Most people seem likely to want the process to be quick, cheap, simple and stress-free, but they may also want it to be rigorous, authoritative and final. Some may prefer an informal process where the dispute is resolved consensually. For some, an important consideration may be that the proceedings remain private.

What dispute resolution options are there?

2.8 The existing landscape of dispute resolution options is confused and confusing, with many variations in name, style and technique. A clear and simple analytical framework is an essential starting point. Again, it is helpful to distinguish outcome and process.

2.9 At the simplest level, there are just two possible outcomes. A dispute resolution process separate from the original decision-maker may produce a decision that is binding on the parties whether they like it or not or one to which they must first consent. (As a variant, some ombudsmen make decisions that are binding on the service provider but not the complainant). A second important distinction is whether both parties must agree to take part, or whether if one party chooses to use a particular option, the other is required to take part.

Participation

		Participation	
		Compulsory	Not Compulsory
Decisions	Binding	Courts/ Tribunals	Arbitration
	Not Binding	Assisted Settlement	

2.10 Within each category, there can then be a wide range of second-order differences in the process. So, **courts and tribunals** do essentially the same things in that they make binding, final decisions (subject to appeal) on people who are required to participate. This necessarily means they are limited to offering legal remedies. Some formality of process is required, although hearings in a large proportion of small claims are relatively informal. **Tribunals** tend to aspire to a more inquisitorial and less formal approach than courts, reducing the need for the parties to be legally represented. Tribunals have specialist jurisdictions and most sit in panels, often with non-lawyer (expert or lay) members; they do not have their own enforcement powers. Most tribunals do not charge fees or routinely order the losing parties to pay winners' costs.

2.11 There are a number of alternative dispute resolution (ADR) processes:

- **adjudication** involves an impartial, independent third party hearing the claims of both sides and issuing a decision to resolve the dispute. The outcome is determined by the adjudicator, not by the parties. Determinations are usually made on the basis of fairness, and the process used and means of decision-making are not bound by law. It can involve a hearing or be based on documents only;
- **arbitration** involves an impartial, independent third party hearing the claims of both sides and issuing a binding decision to resolve the dispute. The outcome is determined by the arbitrator, is final and legally binding, with limited grounds for appeal. It requires both parties' willing and informed consent to participate. It can involve a hearing or be based on documents only;
- **conciliation** involves an impartial third party helping the parties to resolve their dispute by hearing both sides and offering an opinion on settlement. It requires both parties' willing and informed consent to participate. The parties determine the outcome, usually with advice from the conciliator. An example is Acas conciliation;

- **early neutral evaluation** involves an independent person assessing the claims made by each side and giving an opinion on (a) the likely outcome in court or tribunal, (b) a fair outcome, and/or (c) a technical or legal point. It is non-binding, and the parties decide how to use the opinion in their negotiations. It requires both parties' willing and informed consent to participate. It can be useful to help moderate a party's unrealistic claims;
- **mediation** involves an independent third party helping parties to reach a voluntary, mutually agreed resolution. A key principle is that the parties, not the mediator, decide the outcome. It requires both parties' willing and informed consent to participate. It requires mediating skills, and it has a structured format;
- **negotiation** involves dealing directly with the person or the organisation in dispute. It is non-binding and can be done by the person in dispute or by a representative ('assisted negotiation'). The negotiator is not impartial but instead represents a party's interests. An example of negotiation is settlement discussions between solicitors; and
- **ombudsmen** are impartial, independent 'referees' who consider, investigate and resolve complaints about public and private organisations. Their decisions are made on the basis of what is fair and reasonable. They also have a role in influencing good practice in complaints handling.

2.12 In practice, participation in mediation and other non-binding options is usually voluntary. But there is no reason in principle why, even if it is not compulsory, it should not be strongly encouraged in appropriate circumstances. For example, under the Civil Procedure Rules in England and Wales, courts are under a duty to encourage the use of alternative dispute resolution (often mediation) in appropriate cases, and may take account of whether the parties considered this when making case management decisions and ordering costs. A pilot at Central London County Court is automatically referring some civil cases to mediation, and the parties have to give the court their reasons if they do not want to participate. And in most Employment Tribunal cases, there is a stage in the process in which Acas seeks to find an agreed solution before a hearing in the tribunal is held.

2.13 The next chapter examines the current administrative justice landscape in more detail against the background of this analysis, and seeks to identify where the services offered need to be better aligned to the needs of the public.

3 The Administrative Justice Landscape

Overview

3.1 In this chapter we set out in more detail the current administrative justice landscape, by which we mean the main areas of central government decision-making about individuals and the methods which are currently available to individuals, at least in principle, to have those decisions reviewed. It is of necessity only a summary and it deliberately concentrates on central government. We are aware that decisions are made every day by local authorities and health authorities that have an enormous impact on people's lives and may well become the subject of disputes. Those services are not dealt with here nor are the dispute resolution mechanisms applicable to them.

3.2 A comprehensive description of the institutions and of the law which has grown up around what they do and how they interact would be extremely large. That fact in itself speaks volumes. A citizen in a democracy should be in a position to deal with public institutions directly and easily, without the need to study large amounts of information or to seek professional help.

3.3 An individual's grievance may have several facets. He or she may believe that the decision was illegal, or if not illegal, wrong, or that they weren't told of their rights properly or that they were treated unfairly or discourteously. They may be opposed to the law which a department applied to their case or believe that it doesn't apply to them or that the department had a discretion which it should have exercised in their favour. They may be desperate to try any means at their disposal to tackle a problem they have. Or they may simply be trying to do the best they can for themselves or their family. But existing systems of redress do not take people's problems as a whole. Instead they break them down into types and generally insist that people analyse what sort of redress they need and choose the appropriate route. It is rather as if a travel agent insisted on knowing whether you want to go by aeroplane, train or ferry before asking what your destination is.

3.4 There are a number of routes to redress available where things go wrong:

- **making a complaint**:
  - to the decision-making department or agency;
  - to an independent complaint handler;
  - to a Member of Parliament;
  - to the Parliamentary Ombudsman.
- **the bringing of court proceedings**, challenging the lawfulness of the decision, seeking judicial review or some other remedy;
- **the tribunal appeal**, either challenging the lawfulness of the decision or, more usually, challenging the factual basis of the decision.

3.5 Each route to redress has its advantages and disadvantages. Complaints are a flexible and informal way of dealing with issues but no one in the complaints process outside the decision-making department has the power to overturn the original decision (as opposed to prompting reconsideration by the original decision-maker or criticising the way in which the complaint has been handled); courts can overturn the decision but only on narrow grounds and the process is often complex and costly; and tribunals, while they can overturn a decision, are not as accessible or speedy as they might be. But people's grievances are not so clear-cut and our task is to find ways of combining the strengths of all the redress methods so as to give people real choice and a genuinely responsive service, equal to the best service delivery organisations.

Departmental decisions

3.6 Public officials have to make decisions about the rights and obligations of individuals and businesses. These decisions matter. Practically anyone is or may be subject to a decision by a public authority. Even those not directly affected have an indirect interest. We all have an interest in ensuring that individuals and businesses pay their taxes. We all have an interest in eradicating poverty. We all have

an interest in ensuring that all our children get the best possible education. And we all have an interest in ensuring that public money is not wasted. A sense that the system is not balanced or effective or a sense that the system overrides the rights and interests of the individual undermines confidence in public services.

3.7 These are large systems. The numbers of decisions made are huge. Here are some examples.

Direct Tax
It is estimated that there are some 26 million taxpayers in the UK, which means millions of tax decisions. These decisions give rise to about half a million appeals per year, all of which are dealt with by the Inland Revenue in the first instance. If the Inland Revenue and taxpayer are unable to settle the appeal, it is heard by a tax tribunal and there are some 25-30,000 hearings per year.

VAT
There are about 1.7 million VAT registered businesses in the UK and by way of example something in the order of 82,000 VAT assessments are issued each year by Customs and Excise staff although this does not cover the full range of appealable VAT decisions that are made. About 2,000 of all VAT decisions are appealed but about 75% of these are resolved prior to a final tribunal hearing, through withdrawal, agreement or re-consideration by the department.

Benefits
The Department for Work and Pensions makes tens of millions of benefit decisions every year and revises them when customer circumstances change, if necessary.
In the great majority of cases customers accept the decisions on their applications. Decisions are looked at again (reconsidered) when customers dispute them and may be changed. Some 230,000 decisions a year end in an appeal tribunal. Of these, around 40% are changed in favour of the customer.

Criminal Injuries Compensation
In 2001/2002 the Criminal Injuries Compensation Authority made 39,813 tariff awards but more than 37,000 other applications did not meet the eligibility criteria for receiving an award. If the applicant remains dissatisfied after the review, they can appeal to the Criminal Injuries Compensation Appeal Panel (CICAP). In 2002/03 CICAP received 4,764 appeals.

3.8 Public services are expected to get these important decisions right. They must correctly apply the law, and do so fairly and efficiently. But even where a high proportion of decisions are correctly made the individual may not understand the decision or may be unhappy with the way in which he or she has been treated. Even a small percentage of inaccurate decisions can, in a large organisation, mean an unacceptable number of individuals who are disaffected or who have been deprived of their entitlement.

Reforming the public service

3.9 First and foremost we must have departments which get decisions right first time. That means that the decision-makers have to understand the circumstances of individuals and gear what they do to the rights and needs of the individual, not to rigid rules. This key duty of government underpins both the Human Rights Act and the Prime Minister's four key principles of public sector reform:

- **National Standards**
It is the Government's job to set national standards that really matter to the public, within a framework of clear accountability, designed to ensure that citizens have the right to high quality services wherever they live.

- **Devolution and Delegation**
These standards can only be delivered effectively by devolution and delegation to the front line, giving local leaders responsibility and accountability for delivery, and the opportunity to design and develop services around the needs of local people.

- **Flexibility**
More flexibility is required for public service organisations and their staff to achieve the diversity of service provision needed to respond to the wide range of customer aspirations. This means challenging restrictive practices and reducing red tape; greater and more flexible incentives and rewards for good performance; strong leadership and management; and high quality training and development.

• **Choice**
Public services need to offer expanding choice for the customer. Giving people a choice about the service they can have and who provides it helps ensure that services are designed around their customers. An element of contestability between alternative suppliers can also drive up standards and empower customers locked into poor service from their traditional supplier.

3.10 While there is still much to do, important progress has already been made under the earlier Modernising Government and Civil Service Reform programmes. Talented people at all levels are being recruited to the public service, with new skills to add to the expertise already available. Good progress is being made towards making public services more diverse. Through better training on project management techniques, improvements in delivery capability are on track. And there is more focus on outcomes and rewarding people for delivery.

3.11 Thus it can be seen that much work is being done within departments to make real and fundamental improvements to the way in which they deliver public services. But that means making the systems of redress fit for the 21st century too.

Complaints to departments and agencies

3.12 What can an individual do? The first and most direct remedy is to dispute decisions directly with departments and agencies.

3.13 But in a democracy ruled by law, and under a government committed to high-quality and responsive public services, simply appealing to a department's sense of fairness is not, and has never been, enough. There has to be redress beyond the department. But at this point the system becomes more fragmented and the individual is compelled to make choices as to how to go about obtaining redress.

Complaints to independent complaints handlers

3.14 Some departments have supplemented their complaints handling arrangements with an independent complaints handler. Independent complaints handling schemes have their roots in the public sector reforms of the early 1990s when the Cabinet Office recommended that public sector organisations should have established and transparent complaints handling regimes, including 'independent review' wherever possible. The first department to respond was the Inland Revenue, which set up the Adjudicator's Office in May 1993. Over time, other organisations have either created their own equivalent office, or sought to utilise the services of an existing body. For example, the Adjudicator's Office was approached and appointed by Customs and Excise in 1995; by the then Contributions Agency (now the Inland Revenue's National Insurance Contributions Office) in the same year; by the Public Guardianship Office in 2001; and by The Insolvency Service in 2003. Further information about the two principal schemes, the Adjudicator and the Independent Case Examiner, is given in Annex A.

3.15 Independent complaints handlers try to resolve complaints where a customer remains unhappy with the way the organisation has dealt with their complaint. Remit is confined to matters of administration, with decisions which are appealable – for example the quantum of a tax assessment or the valuation of a property – reserved to the respective tribunals. In considering a complaint, the scheme can recommend what, if any, additional redress may be appropriate, ranging from apologies through to sometimes very considerable financial redress. Systemic recommendations can also be made aimed at improving public services for the future where a complaint has highlighted a problem with current practice.

3.16 Complainants have direct access to the independent schemes and the service provided, being funded by the organisations, is free to the customer. The sole pre-requisite is that the complaint should first have been considered by the department or agency concerned. In seeking to resolve complaints, increasing emphasis is placed on informal dispute resolution with agreement being reached between organisation and complainant on the proper way to resolve things. Where the independent complaints

handler cannot resolve the complaint to the complainant's satisfaction, it remains open to the complainant to take the complaint to an MP who may refer it to the Parliamentary Ombudsman. In fact, that route is always open to a complainant, who is under no obligation to approach an independent scheme first, but only a minority of complaints do progress through the independent scheme to the Parliamentary Ombudsman.

3.17 While these schemes are funded by the departments whose cases they deal with and cannot compel compliance with their decisions, they in practice operate autonomously and their decisions are almost always accepted. They also provide feedback to departments, which should raise the standards of decision-making. However, their existence is patchy and it could be argued that there is scope for greater Government involvement in establishing a consistent and co-ordinated policy on the role and benefit of independent complaints handling schemes.

Complaints to Members of Parliament

3.18 The MP route stems from the constitutional position of government departments. Ministers have a duty to Parliament to account, and to be held to account, for the policies, decisions and actions of their department and agencies. Anyone can seek the help of their MP who will, if they think it appropriate, raise the matter with the relevant Minister either by letter or in person, or in the House of Commons. At the very minimum the intervention of an MP means that the decision is reconsidered at Ministerial or Chief Executive level. This is an important and flexible means of redress and the number of cases raised this way is considerable. The table below shows the number of letters from MPs and Peers to Ministers or Agency Chief Executives in a selection of departments. Of course many – perhaps most – of these letters will be about policy issues rather than individual cases but the table gives an idea of the scale of the role of MPs acting on behalf of their constituents.

Department or Agency	**2003**
	Number of letters received
Department for Constitutional Affairs	3,417
Department for Culture, Media and Sport	5,460
HM Customs and Excise	2,040
Ministry of Defence	5,977
Department for Education and Skills	14,424
Department for Environment, Food and Rural Affairs	10,410
Foreign and Commonwealth Office including UK Visas	47,132
Department of Health	19,118
Home Office including Prison Service	39,388
Inland Revenue	4,611
Office of the Deputy Prime Minister	9,121
Department for Trade and Industry	15,229
Department for Transport	11,653
HM Treasury	4,036
Department for Work and Pensions	18,762

Complaints to the Parliamentary Ombudsman

3.19 Where the constituent's complaint is about the way in which their case has been handled, rather than the substantive decision it is open to the MP to supplement his or her own efforts with a reference to the Parliamentary Ombudsman. The Parliamentary Ombudsman can investigate complaints from people who consider they have been caused injustice by administrative fault (maladministration) in connection with the actions or omissions of bodies within her jurisdiction. The Parliamentary Ombudsman has considerable investigative powers and can require departments to show her all the relevant papers. She is independent of government and her work is overseen by Parliament. We look more fully at the role of the Parliamentary Ombudsman in Chapter 4.

Court Proceedings

3.20 Another route for redress stems from the obligation of departments to follow the law. The legality of government actions is controlled by the courts – the Administrative Court, which is part of the High Court, in England and Wales; the Court of Session in Scotland; and the High Court in Northern Ireland. The courts' supervisory jurisdiction, exercised in the main through the procedure of judicial review, covers all persons or bodies exercising a public law function, unless Parliament has provided for alternative methods of redress or excluded judicial review. Its primary purpose is to control abuse of power by quashing decisions which are wrong in law or outside the jurisdiction of the decision-maker. The importance of judicial review has grown over the past 40 years but until recently it tended to focus on process. The courts explicitly disclaimed any power to consider facts or merits except insofar as it was necessary in order to reach a correct decision on the legal question involved. The Human Rights Act 1998 has changed that situation in that the courts, like all other public decision-makers, must act in accordance with the European Convention on Human Rights and so may have to make decisions about proportionality. Nevertheless, the courts' jurisdiction still does not extend to rehearing cases and finding a different set of facts or reaching a different conclusion on the evidence given to the decision-maker or on the basis of new information. Judicial review proceedings are complex and demanding and invariably require help and representation by solicitors and counsel. This is inevitably costly.

3.21 In 2002/03 the Administrative Court received 5,123 applications for judicial review in civil and administrative cases, about half of which related to immigration and asylum.

3.22 In England and Wales, appeal from the Administrative Court lies, with permission, to the Court of Appeal (Civil Division) and from there to the House of Lords. The position in Scotland and Northern Ireland is similar.

3.23 Apart from judicial review the courts in general do not have any power to overturn decisions of government departments administering statutory schemes. The jurisdiction of the courts is almost entirely determined by statute and Parliament has in general decided that a remedy through the courts is not appropriate for most areas of administrative justice and for most legal issues arising out of employment.

Tribunals

3.24 With legislation creating rights to State services (e.g. to benefits if certain conditions are met) and obligations (such as to pay tax) came specialist statutory tribunals to give binding rulings in the event of disputes. Initially many were seen both by users and administrators more as part of the administration than as wholly independent judicial bodies. They had the effect of diverting responsibility for individual decisions away from Ministers. But with the Franks Report[2] they became more firmly established as part of the judicial system, but separate from the courts, which were not thought able to cope with litigation arising out of statutory rights and benefits.

3.25 Of the tribunals still operating today, the first were the General and Special Commissioners of Income Tax who gradually shed their original administrative responsibilities and became purely judicial bodies. Among the earliest purely judicial tribunals were the 'courts of referees' and 'umpire', established by the National

[2] Report of the Committee on Administrative Tribunals and Enquiries 1957 CMNP.218

Insurance Act 1911 to handle appeals relating to unemployment benefit and from whom the present-day Appeals Service tribunals and the Social Security Commissioners are descended. They were followed by the Pensions Appeal Tribunals, created after the First World War to make independent decisions about entitlement to war pensions. Many other tribunals followed. When in 1971 Parliament created a new right not to be unfairly dismissed from employment the jurisdiction to decide disputes was given to a tribunal, which formed the basis of the present day Employment Tribunals and Employment Appeal Tribunal. Over the years different tribunals have increased or declined in importance, with social change and the rise and fall of different rights and obligations. The tribunals responsible for setting rents, for instance, have declined with changing regulation of the rented housing sector; conversely, increased migration has generated extra work for the immigration appellate authorities.

3.26 Tribunals were designed to be less formal alternatives to the courts, combining fairness and independence with accessibility and expertise. But whereas they may be fair and expert, to the user they may not always be very clearly distinct from the department whose decisions they review. Many of them continue to be sponsored by those departments, even if their chairmen and members are appointed by the Lord Chancellor and they have a degree of administrative autonomy and a very strong independent ethos. We accept that, for cases which proceed to a full hearing before a tribunal, users are in the main treated fairly and that decisions are accepted. But there is a prior issue. Can people who have a legitimate case overcome the barriers to getting it resolved? Do they even know that they may have a case? Here the picture is much more mixed. There are indications from a number of studies that there may well be significant numbers of individuals who, for a variety of reasons, do not seek redress when they could. Studies in a number of jurisdictions have been summarised in a recent report to the Council on Tribunals by Professor Michael Adler and Jackie Gulland of the University of Edinburgh.[3] There is evidence in a more general context that people with legal problems feel themselves unable to resolve them, at least using whatever formal means are available to them. The recent publication from the Legal Services Research Centre – *Causes of Action: Civil Law and Social Justice* – revealed that over the 3½ year period of the research:

- more than one in three adults experienced a civil law problem; and,
- one in five took no action to solve their problem.

It was estimated that around one million problems go unsolved each year because people don't understand their basic rights or know how to seek help.[4]

3.27 Compared to most other forms of independent redress tribunals handle large volumes. Workloads of individual tribunals can be volatile but in general about a million people a year have cases dealt with by all types of tribunals. Not all cases are simple and straightforward, with only minor issues or modest sums of money at stake. On the contrary, some tribunals deal with cases involving hundreds of millions of pounds, with high quality legal and expert representation; others deal with hugely complex discrimination cases, or with difficult points of law which have profound importance for both the individual in the case and the community as a whole.

3.28 The following table shows the number of appeals to the largest tribunals administered by central government.

[3] *Tribunal Users Experiences, Perceptions and Expectations: a Literature Review*, available on the Council on Tribunals website www.council-on-tribunals.gov.uk

[4] See also *Paths to Justice* by Hazel Genn (Hart: Oxford, 1999)

	Received
Appeals Service[5]	235,657
Mental Health Review Tribunals[6]	20,408
CICAP[7]	4,434
SENDIST[8]	3,638
General & Special Commissioners of Income Tax[9]	29,498
VAT & Duties Tribunal[10]	2,496
Social Security and Child Support Commissioners[11]	6,364
Pensions Appeals[12]	3,372
Immigration Adjudicators[13]	91,945
Immigration Appeal Tribunal[14]	41,889

3.29 The extent to which tribunals succeed in serving the public is considered in Chapter 5.

3.30 So the main response of government to the need to have independent review of decisions about rights and obligations has been to establish a tribunal. There are now some 70 tribunals in existence, some with very large workloads but many moribund or with insignificant workloads. All have some features in common, usually those derived from the courts – but there are also variations and differences between them, many explicable only in historical terms. Governments have proved unimaginative in devising new methods of reviewing their own decisions. There is little by way of alternative dispute resolution methods available to supplement formal tribunal hearings. The only exceptions are:

- the role of Acas in settling employment disputes;
- in cases which may go to the Special Educational Needs and Disability Tribunal (SENDIST) local authorities are obliged to set up conciliation arrangements.

3.31 Both the public and private sectors need to create and maintain suitable and cost effective means of redress. In the next chapter we look in more detail at the role of ombudsmen in both the public and the private sectors and the lessons which may be learnt from the way they handle complaints.

[5] 1/4/03-31/3/04
[6] Does note include Welsh figures
[7] 1/4/03-31/3/04
[8] 1/4/03-31/3/04 (does not include Welsh figures)
[9] 1/1/03-31/12/03
[10] 1/1/03-31/12/03
[11] 1/4/03-31/3/04
[12] 1/1/02-31/12/02 (decided figure includes withdrawn cases)
[13] 1/4/02-31/3/03
[14] 1/4/02-31/3/03

4 The Development of Ombudsman Services

4.1 The office of Parliamentary Ombudsman was established by statute in 1967. Since then other ombudsman services have been set up in both the public and private sectors throughout the United Kingdom. A list of ombudsman schemes and complaints-handling bodies in membership of the British and Irish Ombudsman Association is at Annex B.

4.2 In this chapter we describe the lessons which may be learnt from the successful development of ombudsman services in both the public and private sectors by particular reference to three of them.

Parliamentary Ombudsman

4.3 The role of the Parliamentary Ombudsman has already been outlined in para. 3.19. Following an investigation, if the Ombudsman finds that a complaint is justified, she can recommend that the organisation complained about should provide a remedy. She has no power to enforce her recommendations; but government departments and agencies almost always accept them. Sometimes investigations reveal faults in procedures or systems; and the report can lead a department or body to revise their procedures so others do not suffer the same difficulties. The Ombudsman has no specific duty to try to resolve the dispute between the complainant and the public authority amicably but, particularly in recent years, the Ombudsman has aimed to settle disputes by making informal enquiries of departments and agencies, and agreeing recommendations for settlement, rather than by launching formal statutory investigations. Less than 5% of the cases concluded by the Ombudsman in 2003/04 involved the issue of a statutory investigation report.

4.4 The Ombudsman also has powers to report directly to Parliament in cases where she considers that the injustice identified has not been remedied; or to make 'special reports' to Parliament on any other matters she thinks fit. Notable examples include the Ombudsman's report in 1989 of his investigation into the Barlow Clowes financial scandal which led to payment of a total of some £150 million in compensation to thousands of investors; and the Ombudsman's reports in 2000 and 2001 concerning the State Earnings Related Pension Scheme (SERPS), where the results of a representative sample of investigations from over three hundred complaints gave redress for maladministration to thousands of married couples who had planned for their financial future on the basis of incorrect information disseminated by the then Department of Social Security. A single investigation by the Parliamentary Ombudsman can therefore lead to the resolution of disputes for many thousands of people.

4.5 The Parliamentary Ombudsman ought naturally to be an integral component of attempts to plan and to improve public service delivery. The Ombudsman's aim is a service that should have as its core purpose the flexible and timely resolution of complaints which it achieves by securing appropriate outcomes for individual complainants and by providing authoritative recommendations, where appropriate, to those bodies which are the subject of complaints. By doing so, it should also contribute to efforts to improve complaints handling and to modernise public services.

Local Government Ombudsman

4.6 There are three Local Government Ombudsmen (LGO) for England. They were established some 30 years ago under the provisions of the Local Government Act 1974. This Act sets out a legal framework which is essentially similar to that for the Parliamentary Ombudsman but adapted to cater for the LGOs' specific jurisdiction over the activities of local government and certain other local service providers. Like the Parliamentary Ombudsman, the LGOs may only investigate complaints from the public who consider

they have been caused injustice by maladministration (administrative fault) in connection with the actions or omissions of authorities within their jurisdiction.

4.7 This legal framework has a number of consequences. The focus of the LGOs' work is on injustice suffered by the person aggrieved – they do not generally look at the potential faults of an authority in the absence of personal injustice. Their powers are also limited to powers of investigation, rather than to provide other routes of alternative dispute resolution such as mediation or informal arbitration. But investigations are kept as informal, flexible and non-confrontational as possible. There is no charge for the service and complainants do not need to be represented.

4.8 The LGOs have much experience of handling significant volumes of complaints, with annual incoming complaint levels nationally running at around 19,000. Where it makes sense, complaints of a similar kind will be grouped to ensure consistent and speedy treatment e.g. where there has been a systemic breakdown of a service within a particular authority or group of authorities, as happened with housing benefit administration in recent times.

4.9 The LGOs' investigative processes include significant direct contact with complainants on the telephone, by email and often by home visit.

4.10 For many years the LGOs have viewed their statutory framework flexibly and developed informal dispute resolution processes. They use their wide discretion to end their involvement with complaints where an authority accepts in the course of an investigation that it would like to put right any wrong it may have done to the complainant. The advantages of this approach are that it brings a swift remedy for the complainant and it can avoid the additional delay and cost of an 'in depth' investigation.

4.11 The LGOs also provide advice and guidance on good administrative practice in a number of ways, including:

- publication of guidance notes, e.g. on running a complaints procedure and on remedies for justified complaints;
- issue of special reports which draw together the lessons from a variety of complaints investigated by the LGOs on a particular topic and set out recommended good practice;
- publication of annual reports and digests of cases;
- annual letters to all local authorities within their remit which draw attention to lessons to be learned from the complaints which have been investigated;
- regular liaison meetings between LGO staff and Council officers; and
- training for Council officers in complaints handling and regular visits by LGOs to senior managers and leading members in local authorities.

4.12 By providing this advice and guidance, the LGOs seek to provide feedback to local government on issues which are revealed by their investigations and to improve the capacity of local government to resolve disputes locally without the need for reference to the Ombudsmen. Some of the LGOs' reported decisions and special reports, in particular, have had a powerful influence on administrative practice within local government generally, to the benefit of many more citizens than actually complain.

Private sector ombudsmen

4.13 Redress against businesses (and by businesses against debtors) has traditionally been the job of the courts. But a battle in the courts is not just a daunting prospect for the individual, it is an unattractive option for business. Over the past 30 years the private sector has sought to avoid these battles by developing customer service, complaints handling and arbitration. The last stage in this development has been striking: the regulated sector in particular has adopted and adapted the ombudsman model. Starting with the Insurance Ombudsman in 1981 a number of sectors have created new ombudsman schemes, some with a statutory underpinning, but all with institutional arrangements which set them far enough apart from their parent industries to make them sufficiently independent to claim genuine ombudsman status.

4.14 The Financial Ombudsman Service (FOS) was established in 2000 and brought together a number of schemes, each dealing with different aspects of the financial services industry. It is probably the largest UK Ombudsman scheme. In 2003/04 it handled about half a million complaint enquiries, 90,000 that were resolved by advice and action from the ombudsman service, and just under 100,000 cases that required full dispute resolution. The Service resolved 47% of those cases requiring dispute resolution within 3 months and 80% within 6 months. The cost is met entirely by the financial services industry – there is no charge to consumers.

4.15 The ombudsman model has been adopted in the private sector in the sense that the ombudsmen use similar inquisitorial methods to the Parliamentary Ombudsman rather than court type tribunal hearings. But where they differ is in having an explicit remit to resolve, and if necessary rule on, disputes about contractual services rather than about public sector maladministration. And they have shown themselves able to deal with large numbers of cases. This has been described as transforming the concept of an ombudsman from "hand crafted investigations … to the mass processing of complaints." [15]

4.16 These new services seem to command the confidence of the consumers they serve and the industries and services whose decisions they review. For the firms concerned, court cases which can be costly and may be damaging to the firm's reputation, are replaced in the main by a service which is not too expensive when spread across everyone in the industry and which largely operates in private. For the consumer, the service is free, legal representation is unnecessary, the issue can usually be solved quickly using informal methods and, crucially, the ombudsman is focused on what really matters to the user: resolving the dispute and as far as possible getting a fair result, the outcome depending on the strength of a party's case rather than how well the case is presented.

4.17 Taking the example of the FOS again, the service provides tiers of intervention from initial advice, to mediation or conciliation, to adjudication, (that is, offering an indication of the likely outcome), to a final decision by the ombudsman. The process is paper based throughout and contact between the service, the complainant and the firm is usually by telephone, although the ombudsman can hold hearings if necessary.

4.18 Finally, the private sector ombudsmen usually have an explicit role in improving decision-making and the firms concerned have a financial interest in ensuring the way in which they treat their customers will meet with the approval of the ombudsman. There is clear evidence of this virtuous circle; many of the private sector ombudsmen (and, before them, arbitration schemes) have seen an initial rise in complaints level off and even decline as the firms learn to treat their consumers in a way which will not generate ombudsman cases.[16]

4.19 The FOS provides feedback to the financial services industry in a number of ways. Firstly it shares information with the aim of dispute avoidance through its monthly publication – *Ombudsman News*. Secondly, it holds industry-briefing events under the title *Working Together* which can cover the way the ombudsman is likely to view certain types of complaint. FOS also provides a technical advice service for professional complaints-handlers in firms and the consumer advice sector. This can provide general guidance and advice on ombudsman practice and procedures. Finally, the ombudsman provides feedback to the industry regulator (the Financial Service Authority) where amongst other things, regulatory policy recommendations can be made.

Lessons from the development of ombudsman services

4.20 The key aim of ombudsmen is to improve service delivery and to promote better administration by learning the lessons from effective complaints handling.

[15] Tom Williams and Tamara Goriely *A Question of Numbers: Managing Complaints Against Rising Expectations* in *Administrative Justice in the 21st Century* edited by Michael Harris and Martin Partington (Hart: Oxford, 1999) page 100
[16] Ibid, pp104-111

Of course the encouraging experience of the ombudsman systems cannot be automatically carried over unchanged into tribunals. Unlike a contractual dispute, decisions arising out of many public sector services, such as entitlement to benefit, cannot be settled with a compromise, splitting the difference between two positions. But the fact that the nature of the decision ultimately to be made is different does not mean that there is only one way to reach that decision. On the contrary, we believe that the government has much to learn from the success of ombudsman schemes. Our purpose is to reclaim the idea of flexible dispute resolution for a new era and a different scale of operation, so that the public receive a service tailored to their needs.

4.21 Can the changes we want to see brought about happen with the existing institutional structure? We do not believe that they can. Administrative justice can be described as a system but it was not created as a system and no coherent design or design principle has ever been applied systematically to it. It is a patchwork. One option would be to create a new institution of some kind with the job of improving decision-making and resolving disputes informally. But even with such a new institution there would be a need for an authoritative body, with the powers of the court, to have the final word on rights and obligations. We believe the field is too cluttered already with administrative justice institutions. **What we need to do is to create the unified tribunal system recommended by Sir Andrew Leggatt but transform it into a new type of organisation which will not only provide formal hearings and authoritative rulings where these are needed but will have as well a mission to resolve disputes fairly and informally either by itself or in partnership with the decision-making department, other institutions and the advice sector.**

4.22 In the next chapter we explore in more depth the weaknesses of the present system and in the following chapter we set out how a new body would look and what it would need to do to fulfil the mission we have set for it.

5 Tribunals: The Service Today

5.1 This chapter analyses the effectiveness of the tribunal system today in providing redress. For these purposes we have worked on the assumption that potential users will want and are entitled to the following:

- manifest independence of the new system from those whose decisions are being reviewed;
- appropriate waiting times: that is that cases are dealt with at the right speed;
- cases resolved without formal hearings if possible;
- when hearings are necessary accessible hearing centres with modern facilities;
- easily navigable, comprehensive and comprehensible information about the process;
- hearings which are not daunting or legalistic;
- independent and skilled judiciary;
- authoritative, consistent and comprehensible decisions which command the respect of those affected; and
- a cost efficient service that provides good value to the taxpayer.

5.2 How does this vision square with what we know about the user priorities and experience? The literature review referred to in para. 3.26 provides some information for specific jurisdictions although some of the studies may not reflect more recent changes in the tribunals' world. In addition, we employed MORI to conduct a survey of tribunal users in December 2001. This survey concentrated on process and so did not address every issue.

Independence

5.3 Most central government tribunals are sponsored by the Departments which have lead responsibility for the law on which tribunals are adjudicating and/or which are generating many of the decisions which are under review. The Department usually pays the fees and expenses of the tribunal members and may also appoint some of them. These tribunals may act independently but they are not seen to be manifestly independent of those whose decisions they are reviewing. Furthermore, information about the tribunal process often comes from the original decision-maker, further undermining confidence in the independence of the tribunal.

5.4 Sir Andrew Leggatt concluded that responsibility for tribunals and their administration should not be the responsibility of those whose decisions tribunals are reviewing. Otherwise, it was suggested, for users "every appeal is an away game"[17]. His findings drew widespread support from user representatives and the tribunal judiciary. This issue drew the largest number of responses to the government's consultation paper on the Leggatt Review with nearly 80% of respondents perceiving the current links between tribunals and public authorities to be a threat to the independence of tribunals. The argument was summarised by the National Association of Citizens' Advice Bureaux who said, "In order for there to be confidence in the findings of the tribunal system it is vital for there not only to be independence and impartiality but for this to be clearly seen by all who use the system, whether appellant or respondent".

Waiting times

5.5 We know that waiting times can be too long. It is right that hearings only go ahead when all the information is to hand and the evidence gathered and realistically it may take time to do this especially in the more complex cases. But in general the delays endured by some tribunal appellants give

[17] paragraph 3 p.6

a picture of an under-performing public service. And these statistics do not tell the whole story. They frequently count only the time from receipt of case to date of first hearing. There are almost always delays before – while the department or authority prepares the material to send to the tribunal – and after – because many hearings are adjourned or further hearings are required before the outcome is determined. And even when the tribunal has made its decision there may be a further delay before the decision is implemented. Yet tribunals may be dealing with cases where a quick decision is vital.

5.6 In the MORI survey 18% of respondents identified speeding up the process as one of the improvements they would wish to see.

Informal resolution

5.7 Settlement by negotiation is common in the tax and employment jurisdictions. The vast majority of tax appeals are settled without a hearing. Acas settles 40% of employment tribunal cases (and another 30% are withdrawn or settled by compromise agreements). In other jurisdictions there are powers for departments to revise decisions but no formalised mechanism for dispute resolution apart from the tribunal. This means that in some cases the appellant is compelled to go to a tribunal hearing when the problem could have been resolved earlier and more easily if there had been a suitable trigger for dispute resolution by the department.

Accessibility to hearing centres

5.8 The MORI survey tells us that almost 40% of users surveyed needed to travel for more than one hour to reach the hearing. It also found that over a third of users (36%) said they did not feel 'comfortable' in the tribunal building. And 2.5% of appellants who had gone all the way through the process and had their case scheduled for hearing decided not to attend because of the distance to be travelled.

Accessibility of process

5.9 User representatives argue that clients are often confused by decisions giving rise to appeals and information about appeal rights. The MORI survey showed that 29% of users surveyed felt they were not given enough information in the initial decision letter to reach a decision while only 51% described the letter notifying them of the initial decision as helpful.

5.10 Users express the view that a system that should be informal and accessible is legalistic and complicated. The MORI survey found that almost 40% of those who did appeal said they received little or no information from the tribunal advising them on what would happen. Users also complain of tight timescales for lodging appeals.

Hearings and the judiciary

5.11 The MORI survey indicated a very high level of satisfaction with the courtesy shown by tribunal members (on average 89% of users were satisfied) and the willingness of the tribunal to ensure that the user had sufficient opportunity to contribute to the hearing (average of 79% satisfied). But satisfaction was lower for willingness to explain complex issues and the degree to which the user felt that the tribunal understood his or her case (64% and 66% satisfaction respectively). This might suggest that the problem lies not so much in the way in which hearings are conducted as in the inherent complexity of much of the law which tribunals have to administer, or it may simply reflect the fact that inevitably a high proportion of users were unsuccessful.

Quality of decisions

5.12 Adverse decisions can in most circumstances be appealed to or reviewed by a higher tribunal or court. Except for decisions by immigration adjudicators, onward appeals run

at an extremely low level. The government believes that the exceptionally high rate of appeal from immigration adjudicators to the immigration appeal tribunal is fuelled more by the intention of many appellants to postpone as long as possible removal from the United Kingdom by using every procedural means at their disposal, rather than by the quality of decisions by adjudicators.

5.13 The very low level of onward appeals in almost all tribunals could indicate that in general there is a high level of acceptance of the decisions and this is one indicator of the quality of decisions. But equally it could indicate that appellants just give up. So there is an argument for other forms of review of the quality of decisions. But clearly the government, which is a party to most tribunal cases, cannot act as an independent assessor of the quality of tribunal decisions. Only the judiciary themselves can do that. Systems for peer review of judicial decisions are now being introduced into tribunals and they will provide a further check that the quality of decisions is as it should be.

A cost effective service

5.14 We accept Sir Andrew Leggatt's assessment of the present system as incoherent and inefficient.

5.15 We have explained that many tribunals operate in relative isolation within government departments whose core business is often far removed from the running of a tribunal. And we have noted the effect this has on the services they deliver to customers. But it also has an effect on how the resources invested in them at the taxpayer's expense are used.

5.16 The reforms described in our White Paper are primarily aimed at delivering an improved service rather than making a case for change which is fundamentally financial. Nevertheless there is a financial case for reforms too – a financial case based around the more efficient and better targeted use of resources delivering improved services for the investment made. In this section we look at the financial case for reforming tribunals and what the taxpayer should expect by way of efficient use of resources.

Current service

5.17 The current service provided by the 10 largest tribunals costs just under £280m each year. The table below shows how this amount is broken down:

- judicial costs are the largest single component of costs, which are broadly made up as follows:

Cost Component	Percentage of Total Spend
Judicial Costs	44%
Staff Costs	24%
Accommodation Costs	22%
Other Costs	10%
Total	100%

- the three largest spending tribunals (AS, ETS and IAA) are responsible for around 85% of the total annual spend.

5.18 The cost per case disposed of varies considerably between tribunals, as one would expect given the very varied nature of their workload. The lowest cost achieved is by the General Commissioners of Income Tax but much of their caseload consists of applications by the Inland Revenue for penalties to be imposed which can be quickly and easily disposed of. Of the other tribunals, which deal with disputed cases, the lowest costs are achieved by the Appeal Service with an average which runs at just under £200 per case. This is broadly comparable with the costs of the FOS where, if all complaints resolved are included, the average cost in 2003/04 was £217. The average cost of those resolved by full dispute resolution was £473.

5.19 Other tribunals, ombudsmen and complaints handlers have higher unit costs, depending in large part on the nature of the cases they deal with. Quite apart from differing caseloads tribunals and ombudsmen

generate different types of cost for the parties. In tribunal proceedings, for instance, the parties must provide all the evidence to the tribunal whereas ombudsmen have the ability to seek out the information they consider that they need. It may be reasonable for parties to tribunal cases to bear these costs themselves but some are more properly borne by the taxpayer through, for instance, the legal aid system and grants to voluntary organisations. And both tribunals and ombudsmen deal with test cases where the money spent on one case establishes a principle or precedent which can then be applied in thousands of other cases without the need for them to go through any form of dispute resolution process.

5.20 Costing the different types of process is therefore not straightforward and there is no basis for assuming that a process applied to one type of case in one jurisdiction can be applied to another type of case in a different jurisdiction at the same cost.

Future service

5.21 Our work to date has shown that we can anticipate that savings can be made by bringing services together in the following ways:

- improved use of hearing centres to allow a reduction in bookings of temporary hearing venues;
- introduction of a single judicial office: allowing legal members to work across jurisdictions where qualified to do so;
- permanent staff savings: as a result of the introduction of economies of scale within a single management structure; from greater integration of business processing (where this is possible without damaging necessary specialist expertise) and from more modern ways of working;
- accommodation and related savings stemming from more integration of staff in fewer locations;
- supplies and services: through negotiation of improvements in supplies and services contracts; and
- reduced corporate governance costs.

5.22 Some of these savings will come from simply bringing tribunals together into a single organisation. More radical savings rely on some degree of integration of operational processes allowing staff savings and better utilisation of judicial resources. Others would require significant investment in new buildings and new ICT; and in training and process re-engineering.

5.23 We will keep under review the extent to which additional investment can be self financing through re-investment of efficiency savings. We seek particularly to establish the extent to which further savings may be achieved through exploitation of on-going modernisation initiatives in individual tribunals including:

- development of new IS/IT systems (although these may take some years to come to fruition);
- exploitation of process re-design, to rationalise service delivery;
- opportunities for the co-location of staff in a smaller number of administration buildings as leases expire; and
- rationalisation of the hearing centre estate.

Accommodation

5.24 The challenge of finding suitable, accessible, independent accommodation is a problem that exercises all tribunals from the largest to the smallest. In some areas of the country – such as major towns and cities – there are clusters of accommodation owned by different tribunals delivering the same type of service, sometimes even from the same buildings. Until now, there has been limited opportunity or impetus to maximise their use. Utilisation rates vary considerably across tribunals; some need to hire casual (often unsuitable) venues – whilst others have hearing rooms standing empty. For instance the large estate of the Appeals Service has a utilisation rate of only around 50% for its hearing centres, while two of the top ten tribunals (SENDIST and CICAP) resort to hiring hotels or other casual accommodation for their hearings. There are cities and towns where both the Appeals Service and the Employment Tribunals Service have separate hearing venues and others where neither

has a centre. Remote and rural locations, notably in Scotland and Wales are poorly served. The system needs an estates strategy which makes best use of resources and is geared to known customer needs.

Information Technology

5.25 The inefficiency of effort and resource is particularly apparent in the area of tribunals' information technology needs. All are faced with developing and maintaining their own IT systems even though there are some common business requirements; e.g. case registration, booking the hearing etc. This has been an area in which the levels of investment tribunals have been able to obtain from their sponsors has varied.

Workloads

5.26 The current demarcation between tribunals also produces an inflexible approach to new tribunal work or fluctuations in established jurisdictions. New tribunals are still being created as government seeks to ensure there are proper channels for citizens to resolve disputes with public bodies. For instance five new tribunals may be created during the present session of Parliament. Though many are small, the costs of establishing them can be disproportionately high.

5.27 Established tribunals' workloads can be very volatile. But resources – judiciary, staff, money – cannot be easily deployed across jurisdictions. So the user and the taxpayer both suffer.

Conclusion

5.28 These are not failures of individual tribunals; they are failures of the system or rather the lack of one. There are some programmes to modernise services and there have been some attempts to share best practice. But where progress has been made, this has been in spite of the framework within which tribunals operate. Despite the efforts of the Council on Tribunals there are no effective mechanisms currently in place which ensure that the benefits of progress are shared across the administrative justice system.

5.29 The total cost of the tribunal 'system' is in the region of £280m per year. This money is not being spent effectively. We believe that for the same resources a much better system can be created.

5.30 The case for change is strong. And it is a case for collective action to deliver better services to users.

6 Resolving Disputes: A New Approach

6.1 Previous chapters of this White Paper, the Leggatt Review and many other reports have set out some of the failings in the way in which decisions about individuals are taken and reviewed. There is no lack of goodwill within the public service to solve the problems and improve service to the public but the present arrangements are highly fragmented, with each department, agency or tribunal responsible for trying to make improvements within its own sphere of operation. We believe that we need an approach and institutions which span the whole of government, joining up best practice and driving improvement forward. At the heart of our proposals are:

- a commitment across government to better handling of complaints and faster, friendlier and cheaper solutions;
- a unified service, replacing the fragmented system of tribunals with a role to promote proportionate dispute resolution in central government; and
- an Administrative Justice Council, based on the Council on Tribunals but with an expanded remit.

6.2 The Administrative Justice Council is dealt with in Chapter 11. This chapter deals with our proposals for a unified dispute resolution system.

The role of DCA

6.3 DCA will take the lead on co-ordinating redress policy across Government. Its task will be to facilitate development of more integrated and consistent dispute resolution systems for the benefit of the public. It will take a systemic view across the various means of tackling disputes and the roles of the different organisations that provide them (courts, tribunals, Ombudsmen, independent complaints handlers, etc). It will propose ways of dealing with gaps, weaknesses and overlaps while drawing on the unique qualities and key strengths of the distinct elements of the current arrangements, although apart from tribunals it will not take over sponsorship of or intervene in individual schemes nor will it be able to dictate to other departments, agencies or local authorities.

6.4 On 11 March 2003 the then Lord Chancellor, Lord Irvine of Lairg, announced proposals for a unified tribunals service which would have at its core the top ten non-devolved central government tribunals. We will continue with that plan but this unified tribunals system will become a new type of organisation, not just a federation of existing tribunals. It will have a straightforward mission: **to resolve disputes in the best way possible and to stimulate improved decision-making so that disputes do not happen as a result of poor decision making**. All of its activities will be subordinated to these aims. We intend that the existing judiciary and staff from the tribunals will work together to provide a range of established and innovative services to the large and diverse range of customers currently served by tribunals and to those entitled to redress but who at present do not seek it. Its key features need to be independence, professionalism, accessibility and efficiency – which is what we believe users and potential users want and are certainly entitled to.

6.5 This is a major undertaking, comparable in scope to and in many ways more radical than the reforms which we have already undertaken of the civil and criminal justice systems.

6.6 The basis for this new organisation is the ten largest tribunal organisations administered by central government. These ten are responsible for more than 90% of cases. DCA already has administrative responsibility for five of these, together with a number of smaller tribunals. These tribunals will form the core of the new system (the Tribunals Service) and will be joined by the Appeals Service, the Employment Tribunals Service, the Special Educational Needs and Disability Tribunal, the Criminal Injuries Compensation Appeals Panel and the Mental Health Review Tribunal for England, which will transfer from their current sponsoring departments.

6.7 A full list of those tribunals within the scope of the new service is at Annex C. The particular implications for employment tribunals are dealt with in Chapter 8, and for tax tribunals in Chapter 9. Housing tribunals are dealt with in Annex D. The major tribunals will join the new service between 2006 and 2008 and the others at dates to be agreed between DCA and sponsoring departments.

6.8 Tribunals run by local government have, for now, been excluded from the remit of the new service. Their funding and sponsorship arrangements are sufficiently different to merit separate and fuller review. This review will take place soon after the new service is set up.

New tribunals

6.9 The Government's general policy is that all new tribunal jurisdictions (unless they are to be devolved) will become part of the new organisation, which will have the capacity to set up and run them far more efficiently than if they were to be created as wholly new and separate operations. In the interim all new tribunals will be administered by DCA.

Devolution

6.10 Neither this White Paper nor the Leggatt Review is concerned with tribunals in Scotland dealing with devolved subjects. These are entirely a matter for the Scottish Executive and the Scottish Parliament. But the new organisation will include some tribunals administered by central government throughout Great Britain so these tribunals will have a presence in Scotland. There are also a number of tribunals which operate in subject areas reserved to the UK government but whose administration has been devolved to the Scottish Executive or the National Assembly for Wales. In Wales there are similarly some tribunals dealing with devolved subjects and which are administered by The National Assembly for Wales within the framework of primary legislation made at Westminster. We will review with the Scottish Executive and the National Assembly for Wales the future arrangements for all these tribunals in the light of the new organisation we are creating. We will review with the Scottish Executive the implications for the Court of Session of the proposed relationship between the new tribunal organisation and the courts in England and Wales. Whatever future arrangements may be created our intention is that the new organisation will work closely with the Scottish Executive and the National Assembly for Wales to make best use of the facilities available to both.

6.11 Many of the issues which have prompted this programme of reform may also be relevant to the administration of tribunals in Northern Ireland, and so Northern Ireland will consider the implications, taking into account its own particular circumstances. Any reform programme for Northern Ireland would be the subject of separate consultation.

Benefits to users

6.12 How will this change benefit users? First we must ensure that potential users are not deterred by inappropriate or disproportionate barriers to access. More work needs to be done on this fundamental issue. We will be commissioning research to examine how far all those whose problems can in theory be dealt with by tribunals in fact make use of this route. This research will be available to form the basis for action on the part of the new organisation as it comes into operation. This research will also inform the development of services in that it will provide up to date empirical evidence as to what potential users of the new system actually want from it.

6.13 So what benefits can users expect to see from a single organisation?

Independence

6.14 Sir Andrew concluded that the only way in which customers could be satisfied that tribunals were truly independent was "by developing clear separation between the ministers and other authorities whose policies and decisions are tested by tribunals, and the minister who appoints and supports them". In contrast to many other Ministers, the Secretary of State for Constitutional Affairs does not make the kind of decisions that are subject to appeal. DCA also has a particular mission to protect judicial independence, which will continue to be a key feature of the new organisation, and to improve access to justice. The creation of the new organisation within DCA will, therefore, ensure that the largest tribunals in administrative justice are manifestly independent, and are seen to be independent, from those whose decisions they are reviewing.

Hearing centres

6.15 Bringing together the ten largest tribunals will deliver a network of hearing centres offering a better geographic spread than any individual tribunal can offer. This will, in turn, be part of the greater single estate of DCA. This includes the Crown and county courts estate and is set to grow even further with the addition of the magistrates' courts estate in 2005. DCA will develop a common estate that supports both courts and tribunals in a way that recognises their different requirements but allows both to take advantage of the potential for sharing, especially in more remote locations where only a combined court or tribunal hearing centre would be sustainable.

6.16 The strategy for this common estate will be firmly based on research into user wishes and needs and consultation with user groups. The new organisation will need to establish, not just assume, what the right balance is between facilities and location.

6.17 Subject to that, however, over time we will raise the standard of hearing centre accommodation. We will establish a design guide for tribunal premises ensuring that future projects for buildings will be built to the same standard. This will also ensure that the requirements of the Disability Discrimination Act are met.

6.18 We will introduce flexible, common layouts for hearing rooms so that they are available to the maximum number of tribunals. This will create informal settings for appellants, where these are appropriate.

6.19 Facilities provided for appellants, panel members and staff vary widely across the diverse tribunal estate. Our aim is to establish minimum standards for all hearing locations including facilities such as refreshments, consultation space, hearing rooms and waiting areas. Where existing facilities are below standard provision will be made (wherever possible) in on-going works to bring them to the level set out or to investigate moving to better premises upon lease expiry or as a result of co-location or other opportunities.

A radical approach

6.20 But the bringing together of these tribunals into a new organisation with a new mission also means that the whole way in which services are provided can be reviewed. At the moment, for instance, all cases which require a decision can mean an oral hearing by the judiciary. For some tribunals, such as the Appeals Service and the Immigration Appellate Authority (IAA), the overwhelming majority of cases are disposed of in this way. Yet we know that decisions do not have to be made this way. Ombudsman services have shown that perfectly sound decisions can be made which fully respect the rights of parties without formal hearings. Telephone and video conferencing already makes it possible to have virtual hearings but we need to go further and to re-engineer processes radically so that just solutions can be found without formal hearings at all. We expect this new organisation to innovate. The leadership of the new organisation will have the responsibility to ensure that it does. The organisation will inherit existing jurisdictions and procedural rules but its overarching mission will be dispute resolution and we expect it, in conjunction with departments, users and representatives, to develop new ways of operating. We believe this to be possible even where the issue is one of entitlement rather than compensation. In many cases appellants succeed before tribunals because they bring new evidence, possibly as a result of advice, or because they are more articulate orally than on paper and the tribunal is the first opportunity they have had to explain their case. In other cases the tribunal accepts evidence which the original decision-maker was not prepared to accept. These are benefits which flow from having a tribunal hearing but it is possible to imagine ways in which the same benefit could be achieved without the stress and formality of a hearing. And where it is clear to the tribunal that there is likely to be a particular outcome to a case it must be helpful to everyone if reconsideration can be prompted before a hearing takes place.

6.21 Such an approach would not and need not operate in every type of case. Some are so straightforward that it is quicker and more cost effective for the case to proceed straight to a tribunal for decision. But in other areas, where the issues are more complex and particularly where the success rate for appellants is high, there is a good case for establishing a process which will bring early resolution in a way which benefits everyone. Staff working on behalf of and with delegated

powers from the judiciary could well have an important role to play in such a process. This will mean new skills for staff, different working arrangements for judiciary and staff and new powers for both.

6.22 There is clearly potential for these new services and, we believe, a willingness among committed tribunal judiciary and staff to try them. We therefore intend that the new organisation will have the powers it needs to develop these and other innovative services. As we explained in Chapter 5, it is not possible to make any reliable assumptions about the impact on cost of introducing any of these new services. Nor do we know what impact they would have on the disposal of cases. They may mean a significant reduction in the number of cases which require a full judicial determination or they may turn out to be just another step in the process, adding cost and slowing things down. Prudence and common sense dictates that any new service will need to be piloted so we will launch one or more proportionate dispute resolution projects to test if these alternatives are effective and affordable. The timeline in Chapter 12 indicates when this process could start.

6.23 Where this can be done the stress on users can be reduced and the cost of dispute resolution, for users, their advisors, departments and the taxpayer generally can all be reduced. Of course the rights of participants have to be safeguarded and in many cases a hearing will be unavoidable. None of these proposals is intended to result in any individual receiving less than the entitlement or remedy they would obtain from a full judicial determination, nor, conversely, is it intended to distort duties which a department owes to all its clients, the tax payer and the community. But the important point is that the creation of the new organisation with its new mission places the responsibility for developing this in a feasible but principled way firmly on the leadership of the new organisation.

6.24 The second area where there is potential for radical change is in the operational functions of tribunals – case registration, processing and scheduling, and the distribution of decisions. At present these functions are divided up by tribunal and scattered across a large number of locations. As we create a more unified and flexible system, and as we move away from hearings as the sole method of resolving cases, so the back office functions will need to be rationalised too. The IAA centres at Loughborough and Leicester have shown that there is no need for the back office to be located near the front office and we would expect to be able to improve cost effectiveness and services to users by separating the two over time.

The IAA Customer Service Centre in Leicester fields telephone calls on behalf of the IAA without the need for referral to the tribunal hearing centre. This in turn frees up administrative staff at those centres to concentrate on their other duties. The size of the Tribunals Service will allow the use of a dedicated support centre or centres, which will allow customers and others who need information to obtain it quickly and easily.

6.25 These radical developments ought to mean that savings can be made on the estate, which will then become available for better services.

Dealing with the customer

6.26 We believe that there will be clear advantages to users and their advisors if the essential unity of the new organisation is evident from the way in which the service deals with its customers. This would include such elements as:

- common terminology for processes;
- where feasible, common pathways through the process;
- common terms for administrative positions;
- common customer service standards;
- a standardised look to correspondence; and
- a single website and web strategy.

6.27 It is important that the new organisation has a well-established and recognisable presence on the web. The MORI survey indicated that over half of users would be willing to use the internet in connection with their case at least for some purposes. It should be possible for a potential user, who is aware only of the existence of tribunals in a general sense, to navigate quickly and easily to sources of information about the specialist area in which their dispute is located. There is also scope for developing interactive services for users and their advisers.

6.28 While many users will not have web access a very high proportion of users' advisors will. And by advisors we do not just mean professional advisors, Citizens' Advice Bureaux or trades unions, important though they are for some jurisdictions, but those members of the community such as MPs, local councillors, social workers, GPs and Ministers of Religion to whom people often turn when faced with dealing with the unfamiliar. Above all it will be important that the Tribunals Service's website works closely with other key web based sources of information such as the Community Legal Service's "Just Ask!" site[18].

6.29 But we do not forget that many potential tribunal customers will not have access to electronic information via websites. For these telephone services and paper based information will still be available. The size of the Tribunals Service will allow the establishment of a dedicated communications unit which will have the expertise to produce material for all jurisdictions written in clear plain English, and in other languages and in a variety of formats. We will ensure that help is available from staff in a number of languages. The service will be able to make better use of interpreters. And it will have a specific responsibility to support the work of those voluntary and charitable sector organisations which help and advise users. We envisage, for instance, that the new organisation will provide training, inter-change of staff, varied consultation arrangements both centrally and locally and points of contact for advisors to seek help.

Better information about the tribunal and appeals process

6.30 The type of information available about the tribunal and the appeals process varies. Creation of the new organisation provides an opportunity to standardise the information provided to users and to introduce better levels of service. But this work need not wait for the creation of the new organisation. In advance of its launch, we will work with information managers in tribunals and with other stakeholders including the Council on Tribunals and the advice community, to develop a model that represents best practice for the content, structure and delivery of information of this type. This work will start in October this year, and be known as the **Better Information Project**.

Powers

6.31 Although the new organisation will develop innovative ways of working it will still retain the right and duty to hold hearings. No appellant will lose their right to a hearing. All existing tribunal powers to alter departments' decisions will remain in place. In addition the tribunal judiciary will be able to make comments and suggestions on the way in which a person was treated – were they dealt with quickly and courteously? Were their concerns properly considered? How could the department have done better? The aim is that an individual should be able to feel that all their concerns have been addressed although of course the tribunal judiciary will not be able to conduct in depth investigations in the way that an ombudsman or an independent complaints handler can. And if a decision in favour of an appellant is not implemented promptly the appellant will have the right to bring the matter back to the new organisation to get action.

Improving decision-making

6.32 We see the new organisation as having a key role in stimulating improvements in decision-making. The gains from such improvements are obvious. "Right First Time" means a better result for the individual, less work for appeal mechanisms and lower cost for departments. At present only the President of the Appeals Service is under statutory duty to provide feedback, through a published report to the Secretary of State for Work and Pensions. That report deals only with a sample of cases emanating from DWP so does not cover decision-making by other departments or by local authorities. Other tribunals are simply at the end of the process with no formal machinery to feed back their views on decision-making or any expectation that their views will be acted upon if they do. But there is an end to end process in all jurisdictions. All the participants in the system have a duty to make it work better. We will therefore give the new organisation the duty to publish its views and

[18] www.justask.org.uk

analysis of decision-making and will consider how government and other decision-makers might reply to these reports. Of course decision-making departments have a wider duty than the avoidance of disputes: they have responsibilities to all their users, including the vast majority who are not in dispute with them, and to the wider community, to provide just, efficient and cost-effective services of all kinds. The new tribunal organisation's approach has to be co-operative: it will not be able to dictate to departments as to how they do their work. But we will consider whether joint objectives and targets should be set as this approach has worked well in the criminal justice system.

6.33 With use of these mechanisms we would expect to see improvements in the following areas:

- original decision-making;
- explanation of decisions;
- resolution of disputes without external intervention; and
- availability of information to the public on how to seek redress.

6.34 We intend that the new organisation will enter into agreements with the various decision-making departments which feed into it, setting out how together they intend to improve the end to end process. These agreements will be subject to approval by Ministers and will be reported to the reformed Council on Tribunals.

Organisational Design

6.35 So how will we structure the new organisation to deliver these benefits?

6.36 Sir Andrew Leggatt emphasised the importance of a reformed tribunal system having a simple, clear structure. He concluded, however, that an undivided body would be impracticably large and diverse.[19] He considered that it would make it difficult or impossible to preserve the expertise of both members and staff of the existing tribunals and to improve on both by training across so wide a field. His solution was to create a unified system but with individual tribunal jurisdictions allocated to divisions.

6.37 Our overriding aim in designing the new structure is to bring together those functions which will help and improve the ability of individual jurisdictions to offer the best possible service to users, and to do so in a way which produces a cost efficient service. We therefore need to balance the gains and efficiencies from doing things with as much commonality of process as possible with the need to preserve the inevitably specialist features which stem from differing issues, different law and differing users. Our aim is to create a unified and distinctive system but it will need aspects of a federal structure. The degree of autonomy of individual jurisdictions within the structure will be a matter for the unified organisation itself to determine, within a statutory framework and tested by a simple criterion: what is best for the users? Where areas of law are converging it may make sense to link jurisdictions more closely. For instance, changes to the tax and benefits system have brought tax law and social security law closer together, and this should be reflected in the way in which these jurisdictions are organised. Conversely, employment law remains very distinct and the nature of the disputes very different and so the Employment Tribunals and the Employment Appeal Tribunal will continue to maintain a strong degree of administrative separation, maintaining and strengthening their relationship with Acas and with their key stakeholders.

6.38 We think the formal divisional structure envisaged by Sir Andrew Leggatt is unnecessary in the light of the limited number of jurisdictions which will form the new service in its first phase and might obstruct flexibility and worthwhile developments. Individual jurisdictions will maintain their current statutory existence but the extent to which they show a separate face to the public will depend on an assessment to be made from time to time by the organisation as a whole as to which is the most helpful approach from the point of view of the user.

A manifestly independent and more flexible judiciary

6.39 Around 6,000 tribunal panel members and judiciary currently sit on tribunals either full time or part time. Each is appointed

[19] paragraph 6.3 p.67

to a particular tribunal. Usually there is a President to provide an oversight of judicial matters for the tribunal.

6.40 This system of separate tribunals is often inefficient and inflexible, so users lose out. Uncertain and fluctuating workloads make requirements for judicial numbers difficult to forecast and the current system of many different appointment competitions tends by its nature to be unresponsive and slow. Tribunals may either be faced with shortages, giving rise to delay, or with members who do not sit frequently enough to maintain their skills and knowledge. The use of fee paid members is one way of addressing this but if they are to be effective, they need to sit on a reasonably regular basis. The current system cannot always guarantee this.

6.41 But aside from the inefficiency of such a system, this is not a structure that promotes and develops the skills and experience a modern system of tribunals requires and is entirely unsuited for the radical new approaches to dispute resolution we intend to encourage.

6.42 Tribunals are also faced with what has been described as 'fishing in the same judicial pool', that is competing for suitably qualified tribunal members in spite of disparate terms and remuneration, leaving those who cannot offer competitive terms at a disadvantage.

6.43 When the judiciary and other panel members have been recruited, tribunals have still to face the challenge of training them. Responses to the Leggatt consultation exercise confirm that some tribunal members do not consistently meet users' reasonable expectations of their inter-personal skills and their ability to make proceedings accessible and comprehensible. Some tribunals have training budgets; many of the smaller tribunals struggle to find the cost of the necessary training.

6.44 Equally, the tribunals' approach to the appraisal of members is not uniform; some do not do it at all, whereas others do it to different standards.

Single judicial offices

6.45 We will create a single judicial office for those sitting in first-tier tribunals, and another for those sitting in the appellate tribunal. All the legal members from the central government jurisdictions which are being brought together in the new service will be transferred to the new offices and all new appointments will be made to the new offices. To reflect the judicial status of these office holders we intend to rename them 'Tribunal Judge' and 'Tribunal Appellate Judge' respectively.

Appointment, Assignment and Deployment

6.46 The normal career path for a lawyer interested in a tribunal judicial appointment will start with an application for a fee paid appointment. Recruitment to vacancies will be by fair and open competition. Advertisements will specify the jurisdictions for which recruits are required and applicants will specify which jurisdictions they wish to serve in initially. On appointment, new members will be assigned to a jurisdiction or jurisdictions where there is an operational need provided that the recruitment board has assessed them as qualified for that jurisdiction.

6.47 The Lord Chancellor already appoints around 60% of tribunal panel members – not just legal members but, for example, medical members of the Appeals Service tribunals and the Mental Health Review Tribunal. But this leaves a number of tribunals where the Minister with responsibility for the original decision (or for the policy concerned) also appoints panel members, pays them and runs the tribunal. While those who sit in tribunals are independent of departments, and make this clear at hearings, the current arrangements mean that independence is not as manifestly clear as it should be.

6.48 At the heart of our proposals is the belief that in a modern democratic society it is no longer acceptable for judicial appointments to be entirely in the hands of a Government Minister. Therefore we intend to build upon the principles behind the establishment of a Judicial Appointments Commission and to place under the remit of the Commission the responsibility for recommending candidates for appointment to all tribunal panels within the service, be they legal or other members. In line with other judicial appointments, these

recommendations will be made to the Secretary of State for Constitutional Affairs. Where currently government ministers receive expert advice on the appointment of particular categories of expert members, such as the Royal Institution of Chartered Surveyors for the appointment of surveyor members to the Lands Tribunal, this role will be built into the processes of the Judicial Appointments Commission.

6.49 The Scottish Executive has already accepted the case for an independent element in judicial appointments and in 2002 they set up the Judicial Appointments Board, an advisory body which makes recommendations to the First Minister. So far, the Board's remit extends only to the appointment of judges, sheriffs principal and sheriffs. In addition, the Lord President of the Court of Session, Scotland's senior judge, has responsibility for certain tribunal appointments in Scotland, and Scottish Ministers also have a number of functions in respect of appointments to reserved tribunals. Our plans for development of the system of appointments will need to take account of the separate arrangements which are already in place in Scotland.

6.50 The Judicial Appointments Commission will also be responsible for a similar process to that described in para. 6.46 where a fee paid judge seeks a salaried appointment and where tribunal judges seek appointment as tribunal appellate judges or as jurisdictional presidents or other judicial managerial posts. Our intention is that there should be the possibility of promotion to higher office within the tribunals' world.

6.51 Within the single judicial office we will encourage legal members, both fee paid and salaried, to seek to sit in more than one jurisdiction where there is an operational need. But it is essential for the maintenance of high quality decisions and public confidence in the new organisation that everyone who sits in a particular jurisdiction has the necessary skills and specialist expertise. Sitting in more than one jurisdiction will not be automatic. Control over assignment to more than one jurisdiction will rest with the senior judicial figures within the tribunal organisation – typically the Senior President and the President of the particular jurisdiction or another judge acting on his or her behalf. The Judicial Appointments Commission will not be involved in these decisions but there will have to be an established process for the decisions which will need to reflect certain key principles:

- the process must be open and transparent;
- it must recognise merit, linking in to judicial appraisal;
- there must be safeguards to ensure existing standards are not weakened; and
- assignments will be linked to business needs.

6.52 This does not represent a significant departure from current practice – more a recognition of what happens at present and an opportunity to create a coherent and efficient framework. Even with the present system of appointments, around 20% of panel members are appointed to more than one tribunal. The tribunals that they sit on are often completely unrelated in terms of subject matter – there is for example a significant number of members who hear both employment and asylum cases. But this does not preclude a high level of specialisation where appropriate, particularly for fee paid members. However, the numbers of fee paid judges need to be constantly reviewed to ensure that each sits frequently enough to maintain a high level of expertise.

6.53 The structure will provide a framework for providing users with consistent standards of decision-making and other skills. It will not put in place a single panel but it will create over time a single corps of tribunal judiciary. This will also allow the profile of tribunal judicial office to be recognised and raised. We would also expect a system of this kind to deliver a body of tribunal members who are as genuinely diverse as the society they serve.

6.54 Deployment of individual judges to particular locations and cases will be a matter for presidents and other judicial managers, working in partnership with staff, but subject to the overriding rule that only those who have been assigned to a particular jurisdiction can deal with cases in it. The new structure would be more flexible and so make it easier for judicial managers and staff to allocate members to hearings and list cases to them. This will help to deliver the goal of prompt service to users. The balance between salaried and fee paid judiciary will be a

matter for the new organisation itself but subject to resource considerations.

6.55 We also intend to encourage greater interchange with the courts' judiciary. Salaried judges will be treated as if they are holders of the appropriate type of tribunals' single judicial office but will sit on tribunal cases only insofar as they are assigned to a jurisdiction by the organisation's own assignment machinery, as outlined in para. 6.51.

6.56 The appointment, assignment and deployment machinery will need to reflect not just the need for expertise in particular areas of law but the different legal contexts for specialised areas in Scotland, Wales and Northern Ireland.

6.57 What must be put in place to deliver such a system? We set two key requirements for the new Tribunals Judicial System: good leadership with an appropriate structure of regional and judicial support and a framework of appropriate terms and conditions to reflect the new arrangements. We consider these in turn.

Judicial leadership

6.58 Sir Andrew Leggatt suggested that it should be the task of tribunal presidents to promote by leadership and co-ordination, consistency of decision-making and uniformity of practice and procedure. He further recommended the creation of a post of Senior President to head the tribunal system, suggesting that he or she should be a High Court Judge sitting in one of the Appellate Tribunals. He did not go on to describe in detail what the role of a Senior President might be but it is clear that the present tribunal system suffers from fragmented leadership in comparison with the criminal and civil jurisdictions.

6.59 Without a clear single voice able to speak for the tribunal judiciary collectively there is a danger that proposals for the reform of the administration of tribunals will be developed in isolation or without taking on board the needs of all the disparate jurisdictions in the new organisation. Such a scenario will only hamper the development of an effective partnership between the judiciary and administrators. Therefore, we intend to establish in legislation the office of Senior President of Tribunals with direct responsibility for all tribunals within the scope of the new system.

6.60 In the immediate future the role of a Senior President is strategic, co-ordinating and directing judicial input into the development of the Tribunals Service. When the new system is operational the Senior President will have a major role in setting its direction, developing new services and balancing the judicial needs of the individual jurisdictions.

6.61 In order to ensure the necessary leadership, we believe that the Senior President should have knowledge, experience and standing equivalent to a Lord Justice of Appeal. This appointment would be on a par with the Deputy Head of Civil Justice or the Senior Presiding Judge in England and Wales. We therefore intend that the appointment would be made by the Lord Chief Justice of England and Wales but with the concurrence of the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland, reflecting the UK wide remit of the role.

6.62 Individual jurisdictions will continue to have presidents, although a number of jurisdictions may be combined for this purpose, as, for instance, happens now with some tax and finance tribunals. Their key role will be to provide judicial leadership within the individual jurisdictions, safeguarding and developing expertise and providing a major input into judicial training and appraisal. These positions will either be held by High Court Judges or will be filled by competition among suitably qualified applicants. Where circumstances warrant it there could also be regional tribunal judges who will be responsible for judicial deployment across a geographic area, working with the local administrators.

6.63 How might this work in practice? We envisage that in a region there would typically be a small team of salaried judges and a much larger team of fee paid tribunal judges. Each will have been appointed to a particular jurisdiction or authorised by the appropriate jurisdictional president to sit in particular jurisdictions. Some, particularly the fee paid, may only sit in one or two. Others may have been approved to sit in more. The regional tribunal judge, working with the senior local administrator for the region,

would have the responsibility of balancing the needs of the various jurisdictions across his or her region in order to meet whatever objectives and performance targets have been set either for the system as a whole or for individual jurisdictions within it. The regional tribunal judge would also have a role in appraisal of generic judgecraft skills but would not be expected to assess the technical legal expertise of members of their team who sit in jurisdictions with which they are unfamiliar.

6.64 Presidents and regional tribunal judges will also have a key role in liaison with users and decision-makers.

The role of non-legal members

6.65 A distinctive feature of tribunals is the use of a combination of skills and backgrounds on a panel. This is achieved through appointing non-legal members such as doctors, accountants or surveyors, or people with practical experience of, for instance, employment relations or service in the armed forces. This is intended to ensure that the tribunal has the expertise, knowledge and experience to do justice to a case.

6.66 The proposals described above for a single judicial office coupled with an assignment system only apply for the present to legally qualified members. Other members will still be part of a unified tribunal judiciary, under the leadership of the Senior President, but we will look to analyse in greater depth the role of all types of member across a range of tribunals in the new system. We will seek to identify ways in which they could be deployed more flexibly to the benefit of users and the delivery of justice. Clearly there would be advantages in extending an assignment system to all categories of tribunal member. It would reduce recruitment costs and allow full utilisation of the flexibility presented by creating a unified appointment and assignment system, so improving the speed and flexibility of the service provided to the public. However, we are developing a new type of organisation and need to review the role of non-legal members as a whole.

6.67 There are three issues. First, there is an issue over what precisely the role of non-legal members should be – is it to add balance to the panel? Or to ensure particular interests are represented? Second, for expert members a further area that needs to be developed is whether in fact it is desirable for a tribunal to have a particular expert on the panel as opposed to being available as a witness for the tribunal. Where an expert member carries out his or her own examination or investigations the parties are unable to question that member or rebut his or her conclusions. Indeed it may even give the impression that the tribunal will favour the views of that expert over the case findings of witnesses who are equally expert. Third, there is a question as to what role non-lawyers can and should play in the new alternatives to hearings which we intend the new service to develop.

Rationalisation of Terms and Conditions

6.68 The creation of a unified judiciary and the establishment of a unified appointment for legally qualified members will bring with it a need to rationalise over time the terms and conditions for all tribunal judicial office holders. The current arrangements have developed piecemeal reflecting market forces and differing departmental approaches.

6.69 To ensure that a rationalised system is developed in a manner consistent with other judicial appointments the Senior Salaries Review Body will be invited to review the remuneration for the tribunal judiciary and offer advice.

6.70 For non-legal members the remuneration will be considered as part of the review of their role to ensure that any of the current discrepancies between similar appointments appropriately reflect differences in the role. This will not, however, be a levelling up exercise.

Training

6.71 Sir Andrew Leggatt identified in his report that “the principal way to address the fundamental issues that confront tribunals is by training”[20]. He referred to the Training Needs Analysis (TNA) carried out by the Judicial Studies Board (JSB), the recommendations from which have resulted in the development of the *Competence Framework for Chairman and Members in Tribunals*, the *Framework of Standards for*

[20] paragraph 7.29 p.92

Training and Development in Tribunals, the *Fundamental Principles and Guidance for Appraisals in Tribunals* and *Guidance on Mentoring in Tribunals*.[21]

6.72 These frameworks and guidance complement and underpin the Council on Tribunals *Framework of Standards for Tribunals*[22] and taken as a complete package, they form the basis for a systematic and effective competence-based approach to consistent training and development in tribunals.

6.73 We expect the new tribunal organisation to seek to build on this work in partnership with the JSB and the Council on Tribunals. The Senior President and jurisdictional Presidents will be responsible for ensuring that all tribunal members are properly trained.

6.74 There will be a strong emphasis placed on training in judgecraft skills for all judges and members, based around the skills, knowledge and attributes identified for the judicial role. This role in itself is likely to evolve as new forms of dispute resolution grow up. Members may need to learn mediation skills and how best to use staff to help resolve disputes without the need for formal hearings.

6.75 The Senior President and the jurisdictional Presidents will have the prime responsibility for ensuring that all new members of the judiciary are fully trained before they sit, in both judgecraft skills (in the broadest sense) and in the law and procedure related to the jurisdiction or jurisdictions in which they will sit. We will explore with the JSB mechanisms for ensuring that such training is provided to an appropriate standard and we will consider whether the Board should provide induction training in judgecraft skills for new legal members if they are not already suitably experienced. All new members should also have the benefit of the support and guidance of a trained mentor during their induction and the benefits of further mentoring will be explored with the JSB, particularly where members require support to take on new and additional roles. Existing members will need to undertake training as necessary throughout their careers. All training will be subject to monitoring and evaluation so that the senior President and jurisdictional Presidents can be assured that it is organised and delivered consistently within a nationally agreed framework of standards. Some tribunals already have training judges and this may well prove an effective approach more widely.

6.76 Where issues impact across jurisdictions we will explore with the JSB and the tribunals scope for increasing the range of generic training for panel members in addition to that provided for legal members to help foster a unified judicial culture and to engender the sharing of good practice and approach across jurisdictions.

6.77 We recognise that many Presidents and Chairs, particularly in the larger jurisdictions, undertake a range of duties in addition to sitting. The JSB has begun to design training for Presidents and Regional Chairmen in 'management' skills. We will look to build upon the work already carried out to adequately prepare the tribunals judiciary for the increasing and varied demands placed upon them in the 21st century.

Appraisal

6.78 At the heart of any appraisal system is a desire to ensure standards are maintained and raised. This is of profound importance not only to the user of the tribunal but also to the taxpayer. Appraisal can be used to ensure that new members acquire the competencies required for their role through appropriate training and that existing members maintain their skills and improve them to the benefit of the user.

6.79 The Appeals Service, the immigration appellate authorities and the Residential Property Tribunal Service (RPTS) have introduced appraisal systems, and others, such as the Criminal Injuries Compensation Appeals Panel, are now developing and introducing systems

6.80 We accept Sir Andrew's recommendation that all chairmen and panel members should participate in a review of their performance while sitting.[23] The JSB's *Fundamental Principles and Guidance for Appraisals in Tribunals* draws together the good practice developed in tribunals and sets out a common framework for a coherent system of appraisal across tribunals. We aim to build on this common approach. We are committed to ensuring that there is a consistently high

[21] www.jsboard.co.uk
[22] www.council-on-tribunals.gov.uk
[23] Recommendation 161, paragraph 7.38

standard of decision-making across all tribunals – providing the platform for effective deployment of judicial resources, providing transparency to the system and embedding the principle of assignment on merit.

6.81 Appraisal is a complex and sensitive two way process. The appraiser must have the right skills to do the task effectively and must have a sufficient understanding of the recipient's work for the latter to have confidence in the appraiser. In tribunals, in addition, the important value of judicial independence from the Executive must be maintained. This suggests that only the judiciary can properly and effectively appraise their colleagues but a skilled appraiser should also know how to gather in the views of those affected on the person he or she is to appraise.

Administration

6.82 The tribunals judiciary will be supported by and work in partnership with a separate executive agency in DCA, distinct from the courts but benefiting from close links with other branches of the justice system and provisionally known as the Tribunals Service.

6.83 The agency will provide all the necessary administrative backup to tribunal judges and other members, in partnership where appropriate with other organisations and the private sector. We anticipate that this backup could where appropriate include managing and assisting settlement under the general direction of the judges. This implies a wider range of functions for staff than in general is the case with the current executive agencies and administrative structures which will be absorbed into the Tribunals Service. And it implies new ways of working for both staff and judiciary.

6.84 Although other organisational models have over the years been used for courts and tribunals, experience in DCA, DTI and DWP, and particularly the experience of the Court Service, has shown that the executive agency model works best to deliver cost-effective services to the judiciary and the user.

6.85 The administration will be led by a Chief Executive whose role will include championing continuous improvements in customer service to be delivered by a cost-efficient organisation. The Chief Executive will be answerable to the Secretary of State for Constitutional Affairs, and ultimately to Parliament, for the administration of those tribunals falling within the new service. Within the Agency, the Chief Executive will have his or her own management team, which will be collectively responsible for setting the strategy and monitoring the performance of the Agency. It will be focused on operations, however, with most of its necessary supporting services provided by the appropriate corporate functions provided by DCA. This will allow the service to take full advantage of corporate strategies for IT, estate and procurement. Above all the Chief Executive will have the key role in developing the people who will make up the Agency, pioneering new approaches and motivating staff to create a real working partnership to deliver a new service to the public.

6.86 Like other executive agencies, the Tribunals Service will have a framework document setting out its aims and objectives. It will publish an annual business plan and present its accounts via an annual report. It will set and publish annually its targets for performance against a set of agreed key performance indicators and its subsequent achievements against them.

6.87 The Chief Executive and the management team will work in close partnership with the Senior President and the jurisdictional Presidents. The Senior President will have responsibility for judicial functions and so will remain independent. This partnership is absolutely essential for the success of the new organisation as a whole. The judiciary cannot as a matter of constitutional principle be accountable to government and Parliament for judicial decisions in the way that the Chief Executive and the other civil servants within the organisation are, but, from the point of view of the user, judiciary and staff are delivering a service together. The governance arrangements within the new organisation need to reflect the joint nature of this endeavour.

6.88 Governance arrangements will also need to reinforce the organisation's commitment to the user. A single body representing all significant user interests would probably not be feasible in view of the wide and disparate nature of the jurisdictions within the new organisation but we will place an obligation on the Senior President and the Chief Executive together to propose to Ministers governance machinery which will focus the organisation on the user and prevent it from becoming inward-looking.

6.89 The key performance indicators for the new service will be focussed on the needs of users. We have taken as a starting point what we think users are entitled to from the service, set out in para. 5.1 above. For those cases that do come before a tribunal, the indicators could look like this:

Potential future key performance indicators

Objectives	Scope of Potential Measurement	Sample Potential KPIs
Tribunals that are manifestly independent from those whose decisions they are reviewing	Customer satisfaction	– % of users satisfied with independence of outcome or process – % of user complaints raised relating to failure in independence
Appropriate waiting times	Tribunal Process Appeals Process Customer satisfaction	– Average waiting time from lodgement to disposal – % of new cases processed in target number of days – Waiting time for first hearing – % of decisions dispatched in target number of days – % of customers satisfied with waiting times
Accessible Hearing Centres with modern facilities	Geographic access Opening times Building access Technological access Service access Hearing centre layout	– % of hearing centre visits meeting target travel times – % of customers satisfied with session hearing time – % of hearing centres meeting Disability Discrimination Act Standards – % of hearing centres offering video-conferencing – % of hearing centres offering translator services – % of customers satisfied with hearing centre facilities
Easily navigable, comprehensive and comprehensible information about the tribunals and appeals process	Customer satisfaction Common standards	– % of customers satisfied with information received about tribunals process – Proportion of tribunals with accreditation for use of plain English
Quick and helpful responses from administrative staff to requests for information or complaints	Customer satisfaction Response times	– Response times to letters, faxes and emails – Response times to phone calls – % of customers satisfied with the helpfulness of the response received
Accessible hearings which are not daunting or legalistic	Customer satisfaction	– Customer complaints re daunting nature of hearings – Customer complaints re formality or impersonal nature of hearings
Independent and skilled tribunals judiciary	Training Appraisal Customer satisfaction	– Proportion of tribunal services using a standard appraisal system – Number of customer complaints received
Consistent and comprehensible decisions	Consistency Comprehensibility Customer satisfaction	– Number of appeals received against first tier decisions – % of cases resulting in appeals against first tier decisions – % of customers satisfied with communication of decisions reached
A cost effective service that provides good value to the taxpayer	Caseload Resource Usage Customer Service Costs	– Number of cases – % utilisation of hearing centres – % of customers satisfied with overall service – % increase/decrease in service costs from previous period

6.90 These are by way of example only: precise indicators will need to be formulated with careful regard to the principles of judicial independence as well as accountability for delivery. Equally, a mature approach to assessment requires quantifiable measures of this kind to be balanced by more qualitative analysis, ranging from focus groups and academic research to the organisation's standing in the eyes of Parliament, the public and knowledgeable international observers.

Staff

6.91 Because of the current administrative arrangements for tribunals, career development for tribunal staff tends to mean moving between tribunal and parent department – though the business of each may be very different. In the future we will have created a significant body of tribunal staff (the largest tribunals together currently employ almost 3000 staff) who will work in DCA alongside the staff administering the courts – with whom their work has much more in common. This will promote the development of a proper career structure in courts and tribunals with relevant specialisms within it.

6.92 The new organisation will deal with a vast range of cases from the relatively straightforward to the legislatively complex. So staff must be available to specialise in particular jurisdictions to ensure individual cases get the handling they require. We envisage that the judiciary will be able to delegate responsibilities to staff to manage cases and seek resolution of disputes, under judicial supervision. While the task of making final and authoritative rulings must rest with the independent judiciary we anticipate that this new organisation will develop innovative ways of delivering services, using its staff in creative and original ways. This should mean that the new organisation will be able to offer a much wider range of career opportunities than the present arrangements. Some will offer frontline services to the public, with suitable training and qualifications in customer service. Others will work in close support to the judiciary. Some staff will be working on the development of the usual range of corporate functions, others will be specialists in particular subjects and jurisdictions. Some will be working closely with departments and agencies to help improve their decision-making and redress arrangements; others will be working with the voluntary sector to improve the support given to users of the new services.

6.93 But whatever their role in the new organisation, all staff should regard themselves as belonging to the Tribunals Service. They will all be civil servants, will have, in time, common terms and conditions and will be within DCA's overall pay and grading structure.

Naming the new system

6.94 The overarching judicial organisation in partnership with an executive agency is in many respects a new type of institution, bringing together a number of established tribunals with a mission to improve services to users and the community. We believe it should have a distinctive title which will rapidly be recognised by the public and their advisers. Individual tribunals will still of course retain their legal identity but the extent to which they will be referred to by a specialist name or by a generic title must depend on what is best for promoting accessibility for the user.

6.95 We would welcome views on what the new title should be. There is a case for avoiding the word 'tribunal' in the title, partly because not all the bodies in the new system are, strictly speaking, called tribunals, but mainly because there is some evidence that many of the public find the term 'tribunal' misleading or even daunting. We want to emphasise what the new body is trying to achieve, not to find some kind of common denominator among its component parts. Words and phases like independent, justice, service, rights and dispute resolution might well send the right message to the public.

7 Procedure and Processes

7.1 The procedures and processes of the new tribunal system need to be viewed systematically to ensure that they are all genuinely focused on achieving justice for the user. To that end, we intend to place the system under a statutory obligation, derived from the Civil Procedure Act 1997, to establish rules and procedures which secure that the system of redress provided by the new organisation is accessible, fair and efficient. This will apply both to the procedural rules governing tribunal hearings, to less formal alternatives to hearings and to the case management and administrative processes.

Tribunal rules and procedure

7.2 At present tribunal rules can be complex, while the language used can be confusing to ordinary users. In addition, the work of those providing advice and support to users is made more difficult by the differences in procedure between tribunals. By simplifying rules and procedures, we can deliver real benefits. And the accusation is sometimes made that where a department has rule-making powers it does not strike a proper balance between the department and the user.

7.3 Sir Andrew Leggatt recognised the need for simplification and overhaul of tribunal rules, recommending as a starting point the Council on Tribunals *Model Rules of Procedure*, now the *Guide to Drafting Tribunal Rules*. There is a clear consensus amongst tribunal judiciary that while specialist rules, where they are necessary for the jurisdiction, can still be retained, a much clearer, codified system can be developed to cover many tribunals. And the government accept that the manifest independence of tribunals means that departments cannot be in a position to make rules in their own interests.

7.4 As tribunals transfer into the new organisation responsibility for making their rules will transfer to the Secretary of State for Constitutional Affairs, concentrating authority for the majority of tribunal rules in one office, except that responsibility for employment tribunal rules will remain with the Secretary of State for Trade and Industry. This is because the Secretary of State for Trade and Industry is not in general a participant in employment tribunal cases but does have the overarching policy responsibility for employment relations of which the employment tribunal system is a part.

7.5 Where the rule making power has been transferred to the Secretary of State for Constitutional Affairs we intend to bring the process for making tribunal rules into line with the processes for the civil courts. In the civil courts rules are made by a statutory procedure committee with members drawn from the judiciary and practitioners. The rules are then subject to the approval of the Lord Chancellor. If Parliament approves the Constitutional Reform Bill, which abolishes the office of Lord Chancellor, the power to approve rules will transfer to the Secretary of State for Constitutional Affairs, who will also have the right to require the committee to make rules in order to achieve a specified policy outcome. This is the model which we intend to adopt for tribunals. We will therefore create a tribunals procedure committee.

7.6 The committee itself will be constituted from a core membership, comprised of the Senior President, an appellate tribunal judge, a tribunal judge, a representative of the Council on Tribunals and, importantly, a representative of tribunal users. There are a large number of tribunal jurisdictions, and to deal properly with specialist areas a flexible form of supplementary membership will be needed to ensure that all relevant interests are considered, including the need to reflect Scottish and Northern Irish law. We intend that the Secretary of State for Constitutional Affairs will have the same powers over tribunal procedure as he will over court rules under the Constitutional Reform Bill.

7.7 The committee will have the duty to promote greater consistency between tribunals and restrict use of legalistic terminology. The inclusion of Council on Tribunals and user representatives on the committee should ensure that rules are easier to understand.

Case management

7.8 Where cases are still to be dealt with by way of a hearing we intend that tribunals will be able to find better ways of preparing so that unnecessary adjournments and late postponements are the exception.

7.9 Staff will work in close partnership with judges and other members to ensure that all the relevant material and information is available on the day and that any extraneous issues have been dealt with in advance. This will require panel members and the judiciary to play an active role in case management to avoid either party delaying the progress of a case without good cause or for their own ends. This is no less true, perhaps even more necessary, where that party is a government department or public body. We will ensure that the tribunal procedure committee will be able to give judges and staff sufficient sanctions and powers to carry out this role, such as the power to prevent a party who has not done what they should have done from carrying on with the case. However, sanctions are a last resort, of greater importance will be the ability and willingness on the part of the new organisation to spread best practice and to take the lead in establishing agreements with departments and professional bodies as to the speed and manner of handling cases.

7.10 We also expect that the flow of appeals through the system will improve through the application of case management techniques. The use of case management techniques in the civil courts is now a long accepted fact. Although there are clear differences between the civil courts and tribunals, not least in the level of legal representation, many tribunals use some of the approaches to ensure appeals move through to resolution in a timely manner. However, their use is not consistent and where tribunals effectively manage to reduce waiting times, the lessons learnt are not always shared with other tribunals.

7.11 The ability to manage cases implies that the tribunal controls the process. At present appeals in some administrative law jurisdictions, particularly tax and social security, are lodged with the department, not the tribunal. This enables the department to review its decision immediately and so resolve the dispute without the necessity of involving the tribunal. Where the department does reverse its decision or reach an amicable settlement this is obviously preferable from everyone's point of view. But such an arrangement is not acceptable if the department's control over this stage of the process enables it to delay resolution or put pressure on the appellant to give up. The process must provide strong safeguards against this.

7.12 One solution might be for appellants in all administrative justice jurisdictions to lodge their appeals electronically at a common point serving both the tribunal and the department. The department can then move immediately to review and negotiation (if appropriate) and the Tribunals Service staff will be able to track progress. The procedure committee would set time limits within which the department is free to take the initiative; after that the judiciary and staff of the new service would control the pace of events. The appellant would be told at the outset how his or her case will be handled and that he or she always has the right to ask the Tribunals Service to expedite a case.

7.13 Until we are in a position to offer this fully IT-enabled facility it would probably be expensive and inefficient to transfer the function of receiving appeals in every jurisdiction to the Tribunals Service. It would slow up the process without conferring any real benefit on the user. Instead, in the interim, departments whose tribunals have transferred to the new system will continue to receive appeals but subject to agreements as to how long review and negotiation are to take, what information is to be given to appellants and how users and the public are to be assured that cases are being properly handled.

A more coherent system of appeals and reviews

7.14 The current approach to second-tier appeals has been described by both Lord Woolf and Sir Andrew Leggatt as a "hotchpotch". It has developed alongside the unstructured growth of the tribunals themselves. Some tribunals have an appeal route to another tribunal; some do not. Relationships with the higher courts also vary.

7.15 We propose to establish a simple and coherent appellate system, based upon the principle that tribunal cases should only go to the courts when issues of the weight and importance normally decided by an appeal court need to be resolved.

7.16 In most cases we would expect that the decision of the first instance tribunal will be accepted. With the exception of immigration and asylum cases, this is what happens now. Where there is need for an appeal we believe that the appropriate forum for decision is (with some exceptions detailed below) an appellate tier within the new tribunal structure. This will become the new default position. This will mean changes for some tribunals, particularly the tax tribunals and our proposals for them are discussed in Chapter 9.

7.17 Within the new appellate tier, the Employment Appeal Tribunal will maintain its distinctive identity. Appeals from first instance tribunals in the administrative justice area will go to a new appeals tribunal. This will bring together the jurisdictions of the Social Security and Child Support Commissioners, the Lands Tribunal, the Transport Tribunal and the new upper tier of the reformed tax tribunals. Within the new appeals tribunal the same assignment principle as set out earlier in respect of the tribunal and judiciary will apply – that is, an individual tribunal appellate judge will only sit in jurisdictions to which he or she has been appointed or assigned. However, we would expect over time that some parts of the appeals tribunal will draw closer together. For instance, even now, the Social Security Commissioners would welcome the assistance of the kind of expertise held by the Special Commissioners of Income Tax, and Special Commissioners would welcome the expertise of Surveyor Members of the Lands Tribunal. The administrative appeals tribunal will also be available to take on appeals from tribunals in England and Wales where the appeal would otherwise lie to the High Court either by way of statutory appeal or judicial review. Its composition, including the use of non-legal members, would vary according to need and type of case. We would welcome views on what the new appeals tribunal should be called. At present we favour the Administrative Appeals Tribunal.

7.18 There will be exceptions to the two tier structure described above.

- where the first appeal to a tribunal is from an independent body rather than a government department we do not think it is necessary to provide a second tier of appeal. This would apply to the Financial Services and Market Appeals Tribunal and the Criminal Injuries Compensation Appeal Panel;
- The Special Immigration Appeals Commission and the Proscribed Organisations Appeals Commission deal with a small caseload of complex and sensitive cases. They are presided over by a High Court Judge and have a direct line of appeal to the Court of Appeal. Because of the unusual nature of their jurisdictions we do not intend that these two bodies should be brought within the new judicial organisation although their administrative backup will be supplied by staff from the new service; and
- The Asylum and Immigration Tribunal (AIT) is a new body being created by the Asylum and Immigration (Treatment of Claimants etc) Bill. It has been created as a single tier organisation in part to reduce the impact of the abuse of the present two tier appeal system in asylum cases. It would be contrary to the underlying principles for the creation of the AIT if an appeal were to lie from it to another tribunal;

7.19 To discourage unmeritorious appeals we will also introduce a permission requirement. This requirement will be similar to Section 54 of the Access to Justice Act 1999. We will also introduce a power for jurisdictional Presidents to establish ways

of reviewing tribunal decisions, to avoid mistakes having to go to the appeals tribunal. An appeal from a first instance tribunal should generally be limited to a point of law, although for some jurisdictions this may in practice be interpreted widely, for instance to allow for guidance on valuation principles in rating cases. The general principle is that an appeal hearing is not an opportunity to litigate again the factual issues that were decided at the first tier. The role is to correct errors and to impose consistency of approach.

7.20 To enable the appellate tier to properly fulfil its role in achieving consistency in the application of the law and so as to encourage the development of precedent across tribunals, a series of common principles with regard to precedent will be developed in partnership with the jurisdictional Presidents. This will promote a common view of how these issues should be tackled across jurisdictions, but leave scope for a flexible approach in particular jurisdictions. To prevent uncertainty, it will have to be clear whether and how existing precedents are affected by any change.

7.21 For tribunal users, this will provide a system that is quicker and simpler to navigate. For those tribunals where there is currently no right of appeal or review, we will introduce one. For the taxpayer the system will be more efficient, with more cases remaining within the tribunal system.

Membership of the appellate tier

7.22 The appellate tier will initially be constituted from the jurisdictional Presidents, and the panel members who currently sit in appellate tribunals, supplemented where appropriate by a mixture of High Court and Circuit Judges (and possibly their Scottish and Northern Irish equivalents) seconded to the tribunal for a period of time. We anticipate that in time there will be some direct appointments to this tier and some tribunal judges promoted to it. But we also think it is important that the more senior members of the tribunal judiciary should bring their expertise to bear on selected first instance appeals as well so we anticipate that tribunal appellate judges will also sit at first instance.

7.23 The decision as to which cases merit this kind of treatment will be partly determined by the tribunals procedure committee and partly by case by case decisions by jurisdictional Presidents. If the reason for assigning a case to a tribunal appellate judge is to provide authoritative guidance or because it is likely that the case will be taken on to the Court of Appeal the usual procedure will be to bring the case into the administrative appeals tribunal. The existing first instance jurisdictions of the component parts of the administrative appeals tribunal will remain as they are now.

Clarifying the relationship between tribunals & the courts

7.24 For many hundreds of years the Court of King's Bench (and, later, the King's Bench Division of the High Court) has exercised supervisory jurisdiction in England and Wales over decisions of inferior courts and tribunals. This jurisdiction is now vested in the Administrative Court, which forms part of what is now the Queen's Bench Division of the High Court.

7.25 Many Acts of Parliament, either in relation to particular tribunals, or, more generally, through the Tribunals and Enquiries Acts 1957 and 1992 have created a statutory right of appeal to the higher courts, usually on a point of law, and the High Court will not normally exercise its judicial review jurisdiction if statute has created an equally convenient remedy. In 1976 judicial review procedures were placed on a modern footing and since 1981 section 31 of the Supreme Court Act has provided the necessary statutory underpinning for the High Court's powers in this context.

7.26 In his report, Sir Andrew Leggatt drew attention to the unsatisfactory nature of the inconsistent rights of appeal from tribunals that then existed. He said that "if only for reasons of the greater complexity of procedure, [judicial review] cannot be

regarded as a real alternative to an effective right of appeal."[24] He added that the current arrangements lacked cohesion and he proposed in their place a divisional system of tribunals, each with a corresponding appellate tribunal.

7.27 For the reasons set out earlier we are not proposing to establish a divisional structure but instead propose to create an administrative appeals tribunal from the existing higher-tier appellate tribunals. Our intention is that the new upper tier would be strengthened by the secondment of circuit judges and, for cases of sufficient weight, High Court Judges with the relevant expertise. The courts' traditional supervisory or appellate role would then, in most cases, be exercised by the Court of Appeal, which would be concerned only with appeals that raised an important point of principle or practice, or where some other compelling reason existed that warranted the attention of that court. Our intention is that appeals from tribunals should for the most part remain within the tribunals system and that where novel or difficult points of law are raised appeals should be to the Court of Appeal rather than the High Court.

7.28 Permission to appeal will be necessary both for an appeal from the first tier to the second tier and from an appeal from the second tier to the Court of Appeal. With this structure the only possible role for judicial review in the High Court would be on a refusal by the first and second tier to grant permission to appeal. It is this possible route to redress which has caused so much difficulty for both the Immigration Appellate Authorities and the Courts. When permission to appeal has been refused by both tiers, and provided that the tribunal appellate judiciary are of appropriate quality, as we intend that they should be, there ought not to be a need for further scrutiny of a case by the courts. However, complete exclusion of the courts from their historic supervisory role is a highly contentious constitutional proposition and so we see merit in providing as a final form of recourse a statutory review on paper by a judge of the Court of Appeal.

[24] paragraph 6.8 p.69

8 Employment Tribunals and the Employment Appeal Tribunals

8.1 The Employment Tribunals (ETs) and the Employment Appeal Tribunal (EAT) do not form part of the administrative justice system as it is commonly conceived and have some unique features arising from their history and their party vs party nature. The ETs were formerly called Industrial Tribunals and were established in 1964 and their original jurisdiction, until the Industrial Relations Act 1971, was part of the administrative justice system. But they have acquired an increasing number of jurisdictions, now nearly 80 in total, and are now overwhelmingly party vs party in nature. As employment tribunals have expanded both in jurisdictions and workload there have been a number of reviews of their role, organisation and procedures. In October 2001 the Lord Chancellor and the Secretary of State for Trade and Industry established the Employment Tribunal System Taskforce, to make recommendations on how services could be made more efficient and cost effective for users, against the background of rising caseloads. The taskforce's overall objective was to ensure that the employment tribunal system reflected the needs of its users and the changing environment in which it operated. It was to identify ways of improving operational efficiency and the scope for improving services, to advise on the need for new investment to meet any revised service objectives and performance measures, to consider how to improve liaison between all those involved in the system, including judiciary and the administration and to examine possible improvements to the management of case flow and of case management. The taskforce report was published in July 2002 and its recommendations, which have been accepted by government, were intended to be a coherent strategy for the employment tribunal system. The report – *Moving Forward: The Report of Employment Tribunal System Taskforce* – recommended:

- greater co-ordination and consistency of practice;
- a shift in the axis of the employment tribunal system so that the emphasis is on early disclosure of information with a view to identifying the issues in disputes and their efficient resolution;
- an emphasis on preventative work and the identification of and learning from best practice; and
- the use of tribunal proceedings as a last resort after all other alternative routes for the resolution of disputes have been exhausted.

8.2 There are obvious similarities between this approach to the work of the employment tribunals and the approach which we are developing towards civil and administrative justice on a broader canvas.

8.3 While the taskforce set the agenda and strategy for the way in which the employment tribunal system works it was not part of its remit to examine the primary legislative framework within which the system operates and it did not consider whether legal aid should be introduced into employment tribunals in England and Wales or which department should have responsibility for the employment tribunals.

8.4 Despite the differences with the other tribunals which will form the new system, we have decided to accept Sir Andrew Leggatt's recommendation that they are nonetheless joined with the other tribunals under LCD (now DCA).

8.5 Two main propositions about departmental responsibility were put to the Leggatt Review: that these tribunals should become courts; and that they should remain under the administration of the DTI. Sir Andrew rejected both. On the first he said that this would be a retrograde step, which would lose the tribunals' strength in having multi-member panels and make it more difficult to adopt the enabling approach for users which he wanted to see across the

board. We agree. From the user perspective the balance and expertise which multi-member panels can bring and the maximum informality and accessibility which we seek in the new unified tribunal system are important features. They are much more likely to be maintained and improved if the tribunals are aligned with the other tribunals than with the courts. We also believe that these tribunals will bring some useful perspectives to the new system as a whole such as the experience of working with Acas to resolve disputes and their experience in dealing with discrimination cases. We believe that conferring the power to act as a mediator on all tribunal judges will be of particular benefit to the ETs.

8.6 On the second point he concluded that users would have more confidence in the independence of the tribunals if they were removed from DTI. Although it is not a party to most ET cases the DTI is responsible for the legislation which the tribunals administer as well as paying for them and appointing the non-legal members. We do not think this argument is as convincing as the first and so it is mainly for that reason that we have decided to transfer the tribunals. The DTI will retain responsibility for ET procedural rules as they are an integral part of the employment relations system, but this position will be reviewed when the Tribunal Procedure Committee has been established.

8.7 Within the new unified system the distinctive nature of the law applied and the party vs party processes suggest that there is a need to maintain rather more of a separate identity and administration for these tribunals than for some others. But the key test is what is in the interest of the public and the users. Carefully designed standardised processes can be expected to make things easier for users and their advisers so exceptions will have to be justified.

8.8 We agree with the Leggatt Review recommendations that case management reforms based on the civil procedure reforms need to be introduced into the ETs. Much has been done already within the existing rules and new ET procedural rules to be introduced later this year will parallel provisions in the Civil Procedure Rules. The new rules also implement other task force recommendations.

8.9 The EAT will continue to be distinct within the new structure for second-tier appeals and will not form part of an administrative appeals tribunal. However, the single judicial office principle will apply across the board and so if a member of the EAT judiciary has the necessary skills and expertise he or she may also be assigned to the administrative appeals tribunal (and vice versa). To bring it into line with other appellate bodies we will include in any future legislation on tribunals a provision whereby appeals to the EAT will require permission.

8.10 Unlike most tribunals, there can sometimes be difficulty in enforcing ET decisions. The present process in England and Wales involves registration of the decision in the county court, a process which can be time-consuming and involves paying a fee. The process in Scotland is simpler. Settled cases, even if brokered by Acas or a recognised mediation scheme, have no status beyond that of an ordinary contract. They cannot be registered in the civil courts: if any agreed compensation is not paid the claimant has to start proceedings on the contract and in theory the claim can be contested.

8.11 This is unsatisfactory. We will reform these processes so that an award of compensation, whether ordered by the tribunal or agreed between the parties, can be enforced with the minimum of bureaucracy as if it were an order of the civil courts.

8.12 The major stakeholders in industrial relations – the TUC, the CBI, the Small Business Council, Citizens Advice and others – have always taken a close interest in the workings of the employment tribunal system. We welcome this and will continue to facilitate it. The existing Ministerial Advisory Board will continue but with a remit to advise the Senior President and the Chief Executive of the new structure, as well as the Secretaries of State for Trade and Industry and for Constitutional Affairs.

9 Tax Appeals

9.1 The tax appeals system has developed over a period of some two hundred years. In its current form the system provides for an independent review of certain decisions made by the Inland Revenue[25] and by HM Customs and Excise and is comprised of four distinct entities.

9.2 The General Commissioners of Income Tax hear most of the straightforward appeals of Inland Revenue decisions. There are around 2,200 General Commissioners who are all lay volunteers. They are appointed to around 400 geographic Divisions covering England, Scotland, Wales and Northern Ireland. They appoint Clerks (often local solicitors) who are sessionally paid to provide administrative support and legal advice.

9.3 The Special Commissioners of Income Tax must be legally qualified and deal mostly with the more complex direct taxation cases, although any appellant can elect to have their appeal heard before them rather than the General Commissioners if they wish. There are currently 26 Special Commissioners.

9.4 The VAT and Duties tribunal hears appeals against decisions by HM Customs and Excise relating primarily to VAT and excise issues. There are 43 legally qualified Chairmen (most of whom sit part-time) and 107 part-time lay members. Twenty-five of the Special Commissioners also sit as VAT and Duties Chairmen.

9.5 The Section 703 Tribunal sits infrequently and deals with cases relating to certain provisions of the Income and Corporation Taxes Act 1988. It's members are appointed by the Lord Chancellor.

9.6 Administrative support to the Special Commissioners and VAT and Duties Tribunals is provided by DCA. All members of these tribunals are fee paid or salaried.

9.7 Over the years there have been increasing calls for substantial reform to the tax appeals system from a number of quarters. Reviews have focussed primarily on three key areas where the existing system was felt to fall short of meeting the needs of its users:

9.8 Inconsistency of structures and processes. Each of the tax tribunals varies significantly in terms of processes and procedures as well as the structure and function of its judiciary. This results in a lack of coherence within the appeals system, exemplified by the lack of a clear distinction in the jurisdictions of the General and Special Commissioners.

9.9 Open and representative appointments. General Commissioners are appointed by the Lord Chancellor on the advice of local advisory committees and each Division of General Commissioners is responsible for appointing a Clerk to provide administrative support and legal advice: there is no central control over either recruitment process. This has led to the suggestion that, in some areas, there is a tendency for General Commissioners to be drawn largely from a single social group that is unrepresentative of the community which they serve.

9.10 Manifest tribunal independence. Direct taxation appeals are lodged with the Inland Revenue and, for cases heard by General Commissioners, the initial administration involved in getting the case to hearing is carried out by the Revenue. As a result, the independence of the tax tribunals from the Revenue can be unclear to the appellant.

9.11 These failings of the current system are inherent in the existing legislation. The creation of the unified tribunal system and the merger of the Inland Revenue and HM Customs and Excise offer the ideal setting for reform. However, in recognising the need for structural reform, we should not detract from the on-going work of the General Commissioners and others within the existing structures to offer the best possible service to taxpayers.

[25] Tax credit and Child Benefit appeals are heard by the Appeals Service

A unified jurisdiction

9.12 The general principles for tribunal reform have been described elsewhere in this document. Fundamental to our specific proposal for taxation appeals is drawing together the four existing tax appeal bodies into a single structure. This unified jurisdiction will include all those cases currently heard by the General Commissioners, the Special Commissioners, the VAT and Duties Tribunal and the Section 703 Tribunal. This structure will be capable of hearing the full range of direct and indirect tax cases, from the straightforward and quickly-settled, to the highly complex and lengthy, and will be supported by suitably flexible arrangements for case-management and judicial deployment.

A two tier structure

9.13 In line with the broader proposals for the structure of the Tribunal Service, the tax appeals system will consist of two tiers. The first tier will be responsible for hearing most direct and indirect taxation appeals in the first instance. These will be the less complex cases that concentrate primarily on settling factual issues. Appeals against decisions made by the first tier will lie, with permission and on a point of law, to the administrative appeals tribunal, the appellate tier of the unified tribunal organisation. Onward appeals which currently go to the High Court will in future be dealt with by the administrative appeals tribunal. Further appeals from the administrative appeals tribunal will lie to the Court of Appeal.

9.14 A common theme of respondents to previous consultations on tax appeal reform has been the need for any new system to meet the requirements of all users – ranging from large businesses and institutions (including the government bodies whose decisions are under review) to small traders and individual taxpayers. Concerns had been raised that, for particularly complex and legally contentious cases that currently come before the Special Commissioners of Income Tax or the VAT and Duties Tribunal, the creation of a two tier system would create an additional and inappropriate layer of appeal. We have listened to these views and agree that it would be inappropriate for those complex cases to go through both tiers, as a result the new structure will allow the President of the tax jurisdiction to assign suitable cases for hearing at the appellate tier in the first instance.

9.15 The role of lay members within the tax jurisdiction will be evaluated as part of the wider study of non-legal members a cross the unified tribunals organisation. The appointment of members will be made in line with the wider reform proposals and will ultimately fall within the remit of the Judicial Appointments Commission.

9.16 A new role of President of tax tribunals will be created to preside over the tax jurisdiction, with the same responsibilities for judicial leadership, training, appraisal and professional development as the other jurisdictional Presidents.

9.17 Bringing together the top tribunals within a single administrative organisation should create opportunities for streamlining the support structures for the existing tax tribunals. Where that would allow better service to taxpayers, we aim to merge those services within the central administration for example such functions as listing, booking of hearing rooms, case processing and correspondence-handling.

9.18 Together these reforms will create a harmonised structure for appeals against indirect and direct taxation, meeting the reform principles outlined in this document and building a structure to meet the needs of all users – individual taxpayers, businesses and the new department of HM Revenue and Customs.

10 Supporting the User

10. 1 A democratic state exists to serve its citizens. Our public sector reforms are intended to make that aspiration a reality for the 21st century. That many members of the public need assistance or support in dealing with a state agency is an implicit admission that that agency is still not sufficiently responsive to the needs of the user – that the law is too complicated, or that the agency's actions are not explained clearly enough or in a way which is accessible to every individual, or that the agency's ways of gathering information about an individual's circumstances are too limited. We intend to change that. But some people will always need a lot of help, perhaps because of learning difficulties or physical disability or language problems. And others will need some degree of help until services are successfully made more responsive. This chapter is about how we intend to address those needs – but always bearing in mind that we aim to create a situation where individuals in dispute with the State or who might be taking a case to a tribunal, or defending one, will be able to have their case resolved with little or no support or assistance.

10. 2 As the research into user needs outlined in previous chapters illustrates, users need:

- the ability to explain all the relevant circumstances of their case to the decision-maker;
- a clear explanation of the decision and their options for disputing it, including a description of the role of a tribunal and any alternatives to tribunal proceedings, and any time limits for action;
- further information about tribunal procedures;
- information on how and where to lodge their case and what will happen next, especially what will be required of them;
- clear signposting to sources of advice about their individual case;
- the ability to deal with all necessary paperwork;
- advice on the chances of success and on how they can legitimately maximise their chances of success, including how to present their case or what evidence they need to present; and
- in some cases, advocacy on their behalf to a department or a tribunal or at an oral hearing.

10.3 All these are legitimate requirements on the part of an individual. However, they are not absolute rights. The processes of departments, tribunals and other dispute resolution mechanisms must meet, and preferably exceed, the minimum requirements laid down by the European Convention on Human Rights, common law and statute. But the extent to which they can and should be met at public expense depends on the nature and complexity of the task to be undertaken, the individual's own capabilities and the seriousness of the issues. Full-scale legal representation at the taxpayer's expense in every administrative dispute or tribunal case would be disproportionate and unreasonable. We need a balanced and systematic approach to these issues, involving departments, the new unified tribunal system, existing providers of legal and other expert support and the voluntary, charitable and private sectors.

10. 4 It is important to note that the taxpayer already supports users. In 2002/03 the Legal Services Commission spent over £200m on assistance in asylum and immigration, mental health and welfare benefits cases.[26] Other public sector bodies such as local authorities also provide support, through funding for advice agencies and law centres. The DTI, for instance, funds services from Citizens' Advice. Acas provides advice to both individuals and employers on employment law and best practice. Its helpline takes 750,000 calls for advice every year. Put together with the expenditure on providing

[26] LSC annual report

decision-making and dispute resolution services the key issue is whether all this money is being spent in the best possible way to provide support where it is most needed and can confer most benefit.

10.5 The first requirement for a fair and effective administrative justice system for the individual is that they should be able to explain their circumstances clearly and comprehensively to the decision-making department. It is clear[27] that many cases which go to appeal turn on issues of fact which, had they been known or considered at the decision-making stage, would have resulted in a different decision at the outset. All the money and effort spent on overturning the decision is a waste, putting unnecessary pressure on the individual and tying up resources which could have been spent on direct services to the public. So investment in helping people to make the best possible case at the outset so that the department can get things right first time may well pay dividends for everyone.

10.6 If the decision is still unfavourable the prospective appellant needs a range of information to understand what the decision is and why it was reached, and to decide whether there is anything that can be done. For too many people the process of taking their case to a tribunal is unnecessarily daunting or confusing; they may not even be aware of the tribunal's existence or they may overestimate its capacity to remedy their grievance. As a result people with valid appeals may be deterred from lodging them or may prepare their case so badly that the tribunal has no chance of assessing its merits properly. At the same time poorly understood original decisions or poor understanding of rights in relation to disputing the decision lead to misconceived appeals with little hope of success.

10.7 So the individual needs information but also often needs realistic advice about options open to them and the prospects of success. There is an important distinction between the two needs, with implications for the services which are available. It is a responsibility of departments to explain their decisions clearly and fully. It is a joint responsibility between departments and tribunals to explain what the options and procedures are for obtaining redress. Both departments and tribunals should strive to provide a service of a quality which makes assistance at this stage unnecessary. However, at present, this information is not always integrated in a way which helps the individual to chart a way through their particular problem.

10.8 The Leggatt Review also recommended that departments give clear guidance to staff, particularly those involved in departmental review, on the kinds of case for which the various processes are appropriate.[28] The Review suggested that departments give clear information in their leaflets to users about the circumstances in which an appeal to a tribunal is the route to follow and, by explaining the differences in jurisdiction, those in which a complaint to an ombudsman or adjudicator is more appropriate.

10.9 We agree with all that but we also believe that many users want and would benefit from advice from a source independent of government about what they should do in relation to their case. Some need clear advice on whether they have a case at all in any forum. So while departments should always provide information on appeal and grievance routes it may be more appropriate for government to support external providers, particularly the voluntary and charitable sector, in providing diagnostic tools and advice. Staff at the new tribunal organisation will be able to provide advice on procedure and may be allowed to offer a view on prospects or merits but they have to be neutral, in a way that an advisor does not. They do have a role in assisting independent advisors to give accurate information about procedural options. Because the independent advisor can advise both on the options and the merits it may make more sense from the user's point of view for both types of advice to come from the same source.

[27] see for instance the President of the Appeals Service's reports on decision-making
[28] recommendation 209 p.230

10.10 The voluntary and charitable sector has always played an important role in advice and assistance in administrative justice and tribunal cases. We want that to continue and expand, although the private sector will always have a role in assisting the users of some tribunals and may be able to take on an expanded role in others. Likewise, we see a continuing role for public funding in tribunals where the right to asylum and the right to liberty are involved and in the Employment Appeal Tribunal. Within those parameters, we accept that there is a need in some cases to provide assistance in, for instance, gathering information and evidence and filling in paperwork, and in advising on merits and presentation. We intend to provide resources and work with potential providers to pilot innovative schemes to do this. This will be called the **Enhanced Advice Project**. We do not want to be prescriptive at this stage about what those schemes might be: our intention is to work together with the Legal Services Commission and the voluntary and charitable sector within the resources available. Much will depend on the nature of the innovative dispute resolution methods which the new service succeeds in establishing. Our work together will be as much focused on making procedures more accessible as on devising new ways of assisting people through procedures.

10.11 Our aim is to reduce the need for hearings before tribunals through better decisions and innovative proportionate dispute resolution methods. But some cases will require oral hearings and the extent to which publicly funded advocacy is necessary or desirable in tribunals remains a matter of debate. Tribunals bear many similarities to courts but the hearings are intended to be less formal and adversarial in nature which ought in time to reduce the need for representation. The relevant law may also be simpler than in many court cases and even where it is not in many tribunals there will rarely be a need for a party to concern themselves with technical evidential issues or to deploy the traditional lawyer skill of cross-examination of witnesses.

10.12 A key principle of Sir Andrew Leggatt's report is that tribunals should operate so that there are few exceptions to the principle that tribunal users should be able to prepare and present their cases themselves. Furthermore, he found that representation "not only adds unnecessarily to the cost, formality and delay, but it also works against the objective of making tribunals directly and easily accessible to ... users." He argued that "a combination of good quality information and advice, effective procedures and well-conducted hearings, and competent and well-trained tribunal members" would make it possible for "the vast majority of appellants to put their cases properly themselves" i.e. without representation.[29]

10.13 Some have argued differently. The Law Society, for example, in its response to our consultation on the Leggatt Report, claimed that "in many instances tribunal hearings are not simple enough for individual applicants to manage unaided", and contended that representation was becoming necessary in more tribunals. As a result the Society argued that representation should be encouraged, not least through the extension of legal aid to Employment and Social Security tribunals.

10.14 The government does not accept that blanket availability of legal aid in this way is necessary. It is important to bear in mind that funding is already available for representation at certain tribunal proceedings, including the Employment Appeal Tribunal, any Mental Health Review Tribunal, the Immigration Appeal Tribunal or proceedings before an adjudicator, the Special Immigration Appeals Commission, or the Proscribed Organisations Appeal Commission. In addition, proceedings before the Protection of Children Act Tribunal and certain proceedings before the VAT and Duties Tribunal and the General and Special Commissioners of Income Tax, are also in scope of the Community Legal Service. For other tribunals our intention is to reduce the need for representation by the provision of alternative approaches to dispute resolution, which do not require representation, by improved advice and

[29] paragraph 4.21 p.48

assistance for the preparation of cases and by better trained and more highly skilled panel members. This will help the majority of citizens who can present their case effectively. There will still, however, be a need for representation in some cases, where an individual cannot represent his or her own case and the tribunal is resolving a matter of great importance to the individual. Funding is already available for such exceptional cases under the Access to Justice Act 1999 s.6(8)(b).

10.15 The government believes that the current scope and structure of the Community Legal Service's contribution to supporting users in the administrative justice and employment field is about right for the current process but there is also a case for looking at these issues in a more flexible way. The case for representation and advocacy is based on assumptions about the nature of the tribunal process. As the process changes, so does the need for support.

11 An Administrative Justice Council

11.1 For the past 46 years tribunals have been subject to the supervision of the Council on Tribunals. Over that time its powers and remit have changed little. We are now embarking on what is probably the most radical set of changes to tribunals ever, and we believe that the Council needs to change too – to become an Administrative Justice Council, focused on the needs of the public and users. This chapter deals with how we propose to move the Council into that new role.

The Council at present

11.2 The Council's statutory duties are:

- to keep under review the constitution and working of the tribunals under its supervision;
- to consider and report (to the Lord Chancellor) on such particular matters as may be referred to the Council under the Act. In practice this has involved making mainly general recommendations on procedures and composition of tribunals;
- to be consulted on proposed secondary legislation (rules and regulations) relating to tribunals (but there is no duty to consult the Council on primary legislation);
- to consider and report on matters referred to it concerning statutory inquiries; and
- to make an Annual Report to the Lord Chancellor (to be laid before Parliament).

11.3 Sir Andrew Leggatt made it clear that he saw the Council as having a key role in his proposed tribunal reforms. However, while praising the Council's achievements, he noted a number of deficiencies in the way in which it is obliged to carry out its work. He added that "in focussing on the need for detailed comment on specific issues [the Council] has given insufficient emphasis to strategic thinking about administrative justice generally or about tribunals in particular."[30]

11.4 His recommendations were aimed at developing an enhanced role for the Council. Sir Andrew envisaged a more proactive body, which would champion the needs of users within the Tribunals Service. In pursuit of this aim, it would provide more conferences, more detailed tribunal information, more special reports, and more guidance on standards and best practice.

Strengthening the Council's role

11.5 Sir Andrew's main criticisms of the Council as presently constituted were that it lacked a truly authoritative voice. He observed that "because departments were under no obligation to respond to its criticisms, the Council must have felt that any good it did had to be done by stealth, rather than by confrontation, lest departments take offence and withdraw their collaboration. With unresponsive departments, and no Select Committee to report to, it has not been giving such an account of itself as meets the demands of the twenty-first century."[31]

11.6 We agree that the Council's views should carry greater weight within government, especially where the Council has identified shortcomings in the operation of particular systems. To ensure that the Council can play its full part in assisting the transition to the new tribunal structure and beyond:

- we will introduce a code of practice dealing with consultation with the Council on all forms of legislation affecting tribunals;
- in tandem, we will give the Council authority to publish its comments on legislation, should it think it appropriate. Not all legislation is published in draft form and so some consultation might have to be on a confidential basis with publication of comments where appropriate following publication of the legislation;

[30] paragraph 7.47 p. 96
[31] paragraph 7.48 p. 96

- the Code of Practice will also commit sponsoring government departments to publish its response to the Council's comments as part of the process of publishing primary or subordinate legislation; and
- the Council's reports will be drawn to the attention of the appropriate Select Committee of the House of Commons.

11.7 Much of the above may be achieved without legislation and, coupled with the wider dissemination of the Council's reports will serve to raise its profile across the tribunals world. We will implement these changes as soon as possible.

Supporting the creation of the new dispute resolution system

11.8 The Council has strongly supported the reform and unification of the tribunal system and it will have an important role to play in facilitating the establishment of the new system by, for example:

- collaborating with the Chief Executive of the new agency and other tribunals to identify common performance measures, to promote effective alignment of data collection and more effective benchmarking of performance;
- scrutinising and if necessary challenging the way in which the new organisation is being established;
- in collaboration with the JSB, advising the Senior President on an appropriate initial training policy and co-ordinated training programme for the unified tribunals judiciary;
- obtaining the views of users and the advice sector on issues arising from the unification process, formulating advice to DCA on user priorities and concerns, and promoting ongoing dialogue between the unified tribunals and the user community; and
- recommending which tribunals should be brought into the Tribunals Service after the initial big 10.

Judicial Training and Appraisal

11.9 The present productive partnership between the Judicial Studies Board (JSB) and the Council will continue under our reform proposals:

- the Council will continue to promote effective judicial training, performance management and appraisal for tribunals in accordance with its framework of standards;
- the Council will be actively engaged in identifying training needs and priorities, seeking advice from the JSB on how effectively training is being organised and delivered and providing advice and feedback to the JSB on training issues; and
- the JSB will undertake evaluation and quality assurance of the training actually provided within tribunals, ensuring that training is delivered to agreed national standards. This builds on the recent work of the JSB and the Council on Tribunals in developing a common and consistent approach.

Research

11.10 Sir Andrew recommended that the Council should be enabled to commission research into the operation of administrative justice both in the UK and abroad. While we recognise the importance of soundly based research in developing tribunals policy, the creation of a separate Council on Tribunals research arm would be over-ambitious and unnecessary. The Council does however have a number of advantages when it comes to identifying priorities and encouraging the conduct of research. It will therefore make recommendations on the priorities for DCA research activity in areas of the Council's interest, as well as playing a major role in disseminating, and lending authority to, any research findings.

An Administrative Justice Council

11.11 With the establishment of the new system the need for the Council's current and proposed activities will change. The establishment of a procedure committee for the tribunals, with judicial, professional and user members, will mean that the Council's current role in commenting on secondary legislation will need to be reviewed. One option may be that the Council might retain a

statutory right to be consulted on secondary legislation, but exercise that right through representation on the Procedure Committee. That should mean a better dialogue between the Council and the other interests in the system. Likewise, the creation of a unified system for central government tribunals with a strong and vigorous Senior President and Chief Executive in charge should mean less involvement by the Council in the work of those tribunals. What is needed for the future is a Council which can focus on improvements for the user across the whole administrative justice field, so that the new organisation, and tribunals outside the new organisation, develop and operate under the strategic oversight of an independent and authoritative body with a very wide perspective.

11.12 We therefore propose that the Council should in the longer term, while retaining its supervisory role over all types of tribunal, evolve into an advisory body for the whole administrative justice sector – an Administrative Justice Council. It would report to the Secretary of State for Constitutional Affairs who would have a parallel remit within government to take the lead on redress policy generally. We would, for instance, expect an Administrative Justice Council to make suggestions for departmental review, for proportionate dispute resolution and for the balance between the different components of the system. The Council would therefore be concerned to ensure that the relationships between the courts, tribunals, ombudsmen and other ADR routes satisfactorily reflect the needs of users. We envisage a broad-based, mixed membership under an independent Chair, bringing together user representatives and non-executive members with office holders, able to generate ideas for the future that reflect the needs of the various “constituencies” but small enough to function as a collective and active body. The Parliamentary Ombudsman is already ex officio a member of the Council on Tribunals; other officer-holder members could include the Senior President and a senior civil servant from the Cabinet Office or a major decision-making department.

11.13 Thus in discharging its statutory functions in relation to tribunals, on this model the Council would also be charged with taking full account of the broader landscape of administrative justice, and be empowered to make recommendations about it. The new Administrative Justice Council would in addition to the Council on Tribunals current duties therefore:

- keep under review the performance of the administrative justice system as a whole drawing attention to matters of particular importance or concern;
- review the relationships between the various components of the system (in particular ombudsmen, tribunals and the courts) to ensure that these are clear, complementary and flexible;
- identify priorities for, and encourage the conduct of, research; and
- provide advice and make recommendations to government on changes to legislation, practice and procedure which will improve the workings of the administrative justice system.

11.14 The Council at present has a remit covering England, Wales and (through a statutory committee) Scotland, but not Northern Ireland. With the devolved administrations we will consider whether a new structure would be desirable for the new Council.

11.15 Any legislation necessary to facilitate the new role of the Council on Tribunals, as outlined above, will be framed so that it can turn into an Administrative Justice Council when the time is right.

12 The Route to a New System

12.1 In this chapter we set out the steps we intend to take to establish our transformed system. Much can be accomplished without legislation, including the creation of the Tribunals Service and the transfer of existing tribunal administrations to it. But some changes will require legislation and these are set out in italics. The Government's legislative programme is not settled until shortly before the start of a session and is announced in the Queen's Speech, so these changes are illustrative only i.e. they show what would happen if a Bill were introduced at the point set out in this sequence.

2001	August	Leggatt Review published and public consultation started
2003	March	Lord Irvine announces Government's intention to establish new Tribunals Service
	November	Lord Filkin in his speech to the Council on Tribunals' Conference, sets out a broader vision for reform
2004	February	DCA tribunals separate from the Court Service to form the nucleus of the new system
	June	Administration of General Commissioners of Income Tax transferred to DCA Tribunals Group Law Commission housing adjudication project starts
	July	**White Paper published**
	September	Chief Executive of the new Tribunals Service agency appointed
	October	Better Information Project starts
2005	January	Pilots of PDR and enhanced advice schemes commence
	April	Tribunals Service executive agency launched on a shadow basis, taking over the administration of the DCA tribunals
	June	Law Commission consultation paper on housing adjudication *Courts and Tribunals Bill introduced*
	October	Better Information Project reports
	December	*Royal Assent for Courts and Tribunals Bill*
2006	January	Review of role of different types of members starts
	March	Evaluation of enhanced advice and PDR schemes published
	April	Formal launch of Tribunals Service agency *Tribunal Procedure Committee established* SENDIST and Employment Tribunals Service join new service *Council on Tribunals becomes Administrative Justice Council*
	December	Review of roles reports
2007	January	Review of local government tribunals starts
	April	Appeals Service joins new service *Single judicial office implemented* *Administrative appeals tribunal operational*
	May	Law Commission final report on housing adjudication
2008	January	Review of local government tribunals reports
	April	CICAP and Mental Health tribunals join new service
2009	April	Remaining central government tribunals join new service

Approach to implementation

12.2 We have set out elsewhere in the White Paper how we believe the creation of a new organisation to provide a single administrative structure for tribunals will benefit customers. In this section we set out what changes customers can expect to see as the reform programme rolls out.

12.3 We aim to formally launch the Tribunals Service in April 2006 as a new executive agency in DCA although it will be running informally from a year before that. A Chief Executive for the new agency will be appointed in 2004 and in partnership with the Senior President-designate he or she will drive forward the change programme.

12.4 The creation of the new system is being phased in order to ensure that tribunals are brought together in a controlled and orderly way, that existing reform plans are not disrupted and that the unified courts administration is properly established. The transfer dates are not, however, set in stone and we will look to transfer tribunals at an earlier stage if it is in the interests of all parties to do so. So we are exploring if the timetable for transfer can be accelerated.

12.5 But we will not wait for tribunals to transfer to DCA before we improve the services they deliver to customers. Sir Andrew Leggatt's Review has already done much to change the culture in which tribunals see themselves working – we are now seeing a much greater awareness of how by working together tribunals feel they can improve the services they offer. In the last couple of years, informal working and networking groups have been set up, aimed at sharing best practice and sometimes actual resources. All this will have produced some gains.

12.6 But we now intend to do more and to work with tribunals in a series of proactive programmes to promote sharing resources ahead of formal transfers across government boundaries. What we seek to deliver are both larger and smaller tribunals regarding themselves as part of a common system and being prepared to work for the good of that system and for the good of all those who make use of tribunals, either as actual or potential customers.

12.7 What will these improvements deliver? Firstly we want to tackle now the provision of hearing centres so that we can utilise the existing hearing centre estate for the benefit of all customers. By putting in place an active programme of sharing of existing centres, we can tackle under-utilisation by larger tribunals and the need to hire hotels and other temporary accommodation by others. This is the **Shared Accommodation Initiative**.

12.8 We have already started to see the benefits of this joined up approach to accommodation, having achieved the co-location of SENDIST with DCA's tribunals some two years ahead of their formal transfer. We will look to exploit other opportunities as they arise.

12.9 We will also explore the potential for centralising administrative support. A number of tribunals already have dedicated back office facilities and we will look to see whether there is scope for these to take on more work from other tribunals. For users, this will have the benefit of speeding up processing times. There is also scope for efficiency savings if this leads to further rationalisation of the estate.

12.10 We will take account of current modernisation programmes proprosed or being pursued in tribunal systems due to join the new structure. We will look at whether the solutions proposed by the programmes are suitable for application to other tribunals joining the Tribunals Service.

12.11 An early step will be to establish a Tribunals Service presence on the internet. Initially this will provide information and links to websites of those tribunals that are to join the Tribunals Service. When the Service is launched, its website will be enhanced to form a single front face for tribunals. This will help direct users and their advisors to the right sources of information.

12.12 Our proposals for improving the system for appointment and deployment of the tribunals judiciary will require legislation. Should the Courts and Tribunals Bill receive Royal Assent in 2005, we will look to realise the benefits from our judicial reforms as soon as possible.

12.13 Some of the more radical approaches suggested in this White Paper need to be piloted and evaluated to make sure that they really will deliver the changes for the user which we seek. But all departments will be working together straightaway to improve the service to the public, not waiting for the new agency. So we will within the next few months launch:

- **a commitment across government to raise the standard of decision-making;**
- **a Better Information Project, to raise the standard of decision letters;**
- **a Proportionate Dispute Resolution Project;**
- **with the voluntary sector, an Enhanced Advice Project,**
- **a Shared Accommodation Initiative;**
- **research into Unmet Legal Needs in administrative and employment justice; and**
- **a new Code of Practice under which Government will consult the Council on Tribunals on new legislation.**

AND IN FIVE YEARS FROM NOW...

12.14 The public will have the benefit of:

- **better decisions;**
- **clearer communications;**
- **fast, fair and easily triggered review of decisions by departments; and**
- **an independent, accessible, flexible and authoritative dispute resolution system, tailored to the needs of the individual.**

Annex A
Adjudicator and Independent Case Examiner

The Adjudicator's Office was set up in 1993 and now investigates complaints from people and businesses about the Inland Revenue (including the Tax Credit Office and the Child Benefit Office), Customs and Excise, the Valuation Office Agency, the Public Guardianship Office and the Insolvency Service.

People complain to the Adjudicator about a wide variety of matters. In general terms, they look at complaints about the way things have been handled by the Department in question, including mistakes, delays, poor or misleading advice, staff attitude or behaviour, how departments have exercised discretion and how requests for information are dealt with under Open Government.

The Adjudicator cannot look at matters which can be, or have been, considered by an independent tribunal, for example, if someone is in dispute about how the law should be applied to them. Nor does she look at matters which have already been investigated by the Parliamentary Ombudsman, or matters which relate to criminal prosecution or investigation while the investigation or prosecution is still happening.

In 2002-03 the Adjudicator received approximately 2,780 complaints of which 503 became full investigations – the remainder (known as 'Assistance cases') were either outside of the Adjudicator's jurisdiction or had been referred too early and the Department concerned had not had the opportunity to address the matter. The Assistance Team also answered 15,206 general enquiry telephone calls. In addition to dealing with complaints, the Adjudicator's Office puts a significant degree of effort into assisting and advising Departments on setting up their in-house complaints handling systems.

The Independent Case Examiner (ICE) was established in 1997 and investigates complaints about services provided by the Child Support Agency and the Northern Ireland Social Security Agency, when clients are dissatisfied with the outcome of the Agency's internal complaints service.

The ICE can deal with complaints about services received from the agencies e.g. long delays, mistakes and staff being impolite. They cannot deal with disputes on matters of law relating to child support, complaints which the Parliamentary Ombudsman has either investigated or is investigating or those sent more than 6 months after the Chief Executive of the Child Support Agency has issued a response.

In 2002-03 the ICE received a total of 1,444 new cases but like the Adjudicator's Office, they can only accept cases where the agency concerned has been given the opportunity to deal with the matter themselves; if it falls within jurisdiction i.e. it is not a complaint about legislation or policy. During the year, 911 cases were cleared and of those subject to full investigation (407), 331 were either fully or partially upheld – a little over 81%

The ICE issues customer satisfaction questionnaires to those customers whose complaints it is able to accept for action. During 2002-03, 45% of complainants responded and the results indicated that 86% were satisfied with the ICE's service.

Annex B
British and Irish Ombudsman Association

Voting (Full) Members (Schemes)

Parliamentary Ombudsman
Health Service Ombudsman
Welsh Administration Ombudsman
Local Government Ombudsmen, England
Scottish Public Services Ombudsman
Welsh Public Services Ombudsman
Northern Ireland Ombudsman
Financial Ombudsman Service
Financial Services Ombudsman, Isle of Man
Legal Services Ombudsman, England and Wales
Scottish Legal Services Ombudsman
Pensions Ombudsman
Housing Ombudsman Service
Independent Police Complaints Commission
Police Ombudsman for Northern Ireland
Estate Agents Ombudsman
Otelo (Telecommunications Ombudsman)
Removals Industry Ombudsman
Standards Board for England
The Ombudsman, Ireland
Insurance Ombudsman of Ireland
Ombudsman for the Credit Institutions, Ireland
Pensions Ombudsman of Ireland
Ombudsman for Gibraltar

Associate Members

Consumer Organisations
Citizens Advice (National Association of Citizens Advice Bureaux)
Scottish Consumer Council

Complaint Handling Bodies

The Adjudicator, Inland Revenue, Customs and Excise, Valuation Office Agency, Public Guardianship Office, and the Insolvency Service
Advertising Standards Authority
Canadian Banking and Investment Services Ombudsman
Children's Commissioner for Wales
Commission for Public Appointments
Complaints Adjudicator for Companies House
Complaints Commissioner to the General Council of the Bar
Criminal Cases Review Commission
Criminal Records Bureau
Greffier of the States of Jersey
Healthcare Commission
Immigration Services Commissioner
Independent Assessor of Military Complaints Procedures (Northern Ireland)
Independent Case Examiner for the Child Support Agency and Northern Ireland Social Security Agency
Independent Complaints Reviewer, Land Registry, Public Records Office, Charity Commission, and Housing Corporation
Independent Review Service for the Social Fund
Information Commissioner
Institute of Chartered Accountants of Scotland (Legal Services Department)
Law Society Consumer Complaints Service
Law Society of Scotland (Client Relations Office)
Lay Observer for Northern Ireland
Office of the Independent Adjudicator for Higher Education
Prisons and Probation Ombudsman
Rail Passengers Council
Recruitment and Employment Confederation
Royal Institution of Chartered Surveyors
Scottish Parliamentary Standards Commissioner
Scottish Prisons Complaints Commissioner
Standards Commission for Scotland
Subsidence Adviser
Waterways Ombudsman

Annex C
Central Government Tribunals

1. Tribunals Currently Within DCA

Adjudicator to HM Land Registry [32]

Finance and Tax Tribunals:

Special Commissioners of Income Tax

VAT and Duties Tribunals

The Financial Services and Markets Tribunal

Immigration Appellate Authority (the Immigration Adjudicators and the Immigration Appeals Tribunal)

The Immigration Services Tribunal

General Commissioners of Income Tax

Information Tribunal

Lands Tribunal for England and Wales

Pathogens Access Appeals Commission

Pensions Appeal Tribunal for England & Wales

Proscribed Organisations Appeals Commission

Special Immigration Appeals Commission

Social Security and Child Support Commissioners

Transport Tribunal

2. Tribunals to transfer to DCA in first phase (2006-2008)

Tribunal	Sponsoring Department
Employment Tribunals Service (the Employment Tribunals for England, Scotland and Wales and the Employment Appeals Tribunal)	DTI
Special Educational Needs and Disability Tribunal for England	DfES
Appeals Service (the Appeals Tribunals for England, Scotland and Wales	DWP
Criminal Injuries Compensation Appeals Panel	HO
Mental Health Review Tribunal for England	DoH

3. Other Central Government Tribunals to transfer as agreed

Tribunal	Sponsoring Department
Adjudication Panels for England	ODPM
Agricultural Lands Tribunal for England	DEFRA
Aircraft & Shipbuilding Industries Arbitration Tribunal	DTI
Antarctic Act Tribunal	FCO
Asylum Support Adjudicators	HO
Betting Levy Appeal Tribunal	DCMS
Care Standards Tribunal	DoH
Chemical Weapons Licensing Appeal Tribunal	DTI
Consumer Credit Licensing Appeals	DTI
Dairy Produce Quota Tribunal for England	DEFRA
Estate Agent Appeals	DTI
Family Health Services Appeal Authority	DoH
Fire Service Pensions Appeal Tribunal	ODPM
Foreign Compensation Commission	FCO
Forestry Committees for England and Wales	DEFRA
Independent Adjudicator for National Savings & Investments	HMT
Insolvency Practitioners Tribunal	DTI
Meat Hygiene Appeal Tribunals	DEFRA
Mines & Quarries Tribunal	DTI
Misuse of Drugs Tribunal	HO
NHS Medicines (Control of Prices & Profits) Tribunal	DoH
Plant Varieties and Seeds Tribunal for England	DEFRA
Police Pensions Appeal Tribunal	HO
Registered Designs Appeal Tribunal	DTI
Registered Inspectors of Schools Tribunal	DfES
Reinstatement Committees and Umpires	DTI
Reserve Forces Appeal Tribunal	MOD
Sea Fish Licence Tribunal for England	DEFRA
Section 703 Tribunal	HMT

[32] This decision-making body is not technically a tribunal, rather it is a statutory office created under the Land Registration Act 2000

Annex D
Housing Cases

The reformed tribunal system is designed to be adaptable so that it can take on other existing or new jurisdictions. One important area of work where suggestions have been made over the years that a new tribunal should be created and existing tribunals rationalised is in respect of what are broadly called housing cases.

At present such cases may be dealt with in a very wide range of courts and tribunals, depending on the precise nature of the issue. For instance, landlords' applications for possession are dealt with in the county court, tenants' complaints about disrepair may be dealt with in the county court or the magistrates court, allegations of harassment of tenants are dealt with in the criminal courts and the level of rent or the right to housing benefit are determined in specialist tribunals. The issues here are complex because they are inevitably closely entwined with the substantive law on the ownership and occupation of homes and the remedies that are or might be available. The Law Commission has considered many of these issues in two recent reports: *Renting Homes* [33] and *Land, Valuation and Housing Tribunals: The Future* [34]. The Commission has now proposed that it undertakes a full and wide ranging review of housing adjudication as the basis for reform proposals.

The government has agreed to the Commission's proposal. The government and the Commission have developed a common understanding of the appropriate approach to this review, which states that:

"... many occupiers of private and social housing face a multiplicity of social and/or financial problems. There has been a range of policy initiatives which move away from seeing housing problems as having one simple cause, such as welfare dependency, towards a more sophisticated awareness of the complexity of housing problems.

In contrast the current system of legal dispute resolution within housing appears one dimensional. It has developed on an ad hoc basis utilising the traditional, individualised model of contract dispute resolution with its assumptions of equal parties to a bargain and rational informed decision-making. Moreover, a number of criticisms have been made suggesting a significant level of perceived dissatisfaction with the way in which the current system for the adjudication of housing disputes works. Without assuming from the outset that the current system is not adequate, the project will investigate its capacity to contribute to solving people's housing problems, and how it might fit into a broader approach to housing problem solving.

While the final outcome of the project will be substantive law reform proposals, in arriving at its recommendations, the Commission intends to adopt a broad approach, starting from the understanding outlined above.

To do so, the project must do more than simply interrogate law and procedures it will consider:

1. The types of problems relating to housing that people have in practice;
2. How these problem areas break down into individual justifiable legal problems and other non-legal problems;
3. The best way to respond to legal problems and disputes including consideration of other methods of dispute resolution such as negotiation, mediation and so on;
4. For disputes that require judicial determination, the features of a suitable forum; and
5. The links between dispute resolution of legal problems and access to other housing and related services.

[33] Law Commission Report 284
[34] Law Commission Report 281

Comments on this White Paper

Comments on this White Paper are welcome and should be sent to:

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Representative groups are asked to give a summary of the people and organisations they represent when they respond.

The Department may wish to publish responses to this White Paper in due course. **Please ensure your response is marked clearly if you wish your response or name to be kept confidential.**

If you are replying by email, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to us.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

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