

# Right First Time



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# Executive Summary

1. This report addresses a core concern for all those responsible for public services – how to ensure that decisions relating to individuals are ‘right first time’. Its key message is that public bodies can save money and improve the quality of service by making fewer mistakes and learning more from those they do make. It must be better to get things right in the first place rather than having to put them right through expensive and stressful appeal and complaint processes.

## The problem

2. Every day, public bodies make thousands of decisions about individuals across a diverse landscape – welfare benefits, immigration, education, tax, health and so on. Unfortunately, evidence suggests that far too many of these initial decisions are incorrect. Across the public sector there are high volumes of appeals (over a million each year) against decisions and complaints about service provision. A worrying proportion of these appeals and complaints – nearly 40 per cent in some cases – are upheld by tribunals or ombudsmen.
3. Incorrect decisions impact significantly on the lives of those directly concerned – sufficient reason alone to increase the focus on getting things right first time. Compounding the problem is the repetition of these expensive errors. Too few public bodies have in place feedback mechanisms to ensure that the outcomes of appeals and complaints are understood throughout the organisation. In addition, too few of them send representatives to appeals and so cannot understand and learn from how they went wrong. The need to take steps to prevent those same mistakes from recurring should be obvious. Inability to learn lessons only serves to make poor decision-making all the more lamentable.
4. Getting it right first time saves money. Mistakes result in considerable costs for the users of public services, the organisations concerned, and for the wider public purse. There is little evidence that the financial costs of not getting it right first time are fully understood and quantified by public bodies, partly because many of the costs can be off-loaded to tribunals and ombudsmen. As a result, the precise financial cost of poor decision-making and poor service delivery is unknown.
5. Poor service and waste of public money are unacceptable. The need for a sustained initiative to tackle the problem is long over-due. The AJTC considers that public bodies must make it a priority to reduce the level of mistakes and the financial and non-financial costs which go with them. This is particularly important at a time when there are significant cutbacks in public spending.

## How to get it right first time

6. Based around the evidence from previous studies and two case studies conducted as part of this project, this report seeks to explain what right first time means and to offer practical advice on how public bodies can ensure that their decision-making or service delivery meets that standard.
7. We consider that 'right first time' means:
  - making a decision or delivering a service to the user fairly, quickly, accurately and effectively;
  - taking into account the relevant and sufficient evidence and circumstances of a particular case;
  - involving the user and keeping the user updated and informed during the process;
  - communicating and explaining the decision or action to the user in a clear and understandable way, and informing them about their rights in relation to complaints, reviews, appeals or alternative dispute resolution;
  - learning from feedback or complaints about the service or appeals against decisions;
  - empowering and supporting staff through providing high quality guidance, training and mentoring.
8. A key finding of the study is that in order to get things right first time, public sector bodies must be learning organisations, always understanding their users and genuinely putting their perspective at the heart of processes and systems. The report identifies the Fundamentals of right first time as Leadership, Culture, Responsiveness, Resolution, and Learning.
9. The study also highlights Practical Steps that should be adapted and followed by leaders of public bodies when reviewing their services and attempting to establish a right first time approach. These Practical Steps relate to undertaking analysis, deciding on action and encouraging monitoring and learning.

## Recommendations

10. Public bodies with responsibility for making original decisions must take the lead in improving the quality of the service they offer. All such bodies should carry out a review of their systems, procedures and decision-making structures, using the guidance offered in the Practical Steps, to ensure that they are doing all they can to get decisions right first time. As part of this, they should audit and report on the volumes and costs of handling appeals, complaints and reviews on an annual basis. In addition, they must take demonstrable steps to feedback learning from appeals and complaints.
11. Embedding and supporting right first time in the culture and practice of administrative justice must also be seen as the responsibility of governments and parliaments across the UK. It is recommended that the Ministry of Justice and the Cabinet Office (and their devolved counterparts) promote the Fundamentals

and Practical Steps set out in the report, and that Parliamentary Committees undertake enquiries into the progress of right first time initiatives.

12. We argue that it is time to adopt a 'polluter pays' approach to help promote a right first time culture. Tribunals (including, but not limited to, those within the Tribunals Service) are currently carrying a heavy share of the financial burden caused by incorrect decisions. We therefore recommend the development of funding models by which original decision-making organisations contribute to the cost of running tribunals through direct reference to the volume of successful appeals they generate.

## Conclusion

13. This report is intended very much as a practical working tool to help public bodies improve their performance, thereby reducing stress and cost for both end users and for the administrative justice organisations who deal with complaints and appeals.
14. It is vital that all bodies serving the public should improve the quality of decision-making. By implementing the findings and Recommendations of this report they will not only save money but will help to improve the public's trust and confidence in public services.

# Introduction

1. This report addresses a core concern for all public bodies and, in particular, those responsible for public services; namely, how to ensure that decisions relating to individuals are 'right first time'. It offers practical advice on how to meet this objective and makes Recommendations to public bodies, governments, parliaments and tribunals across the UK on how best to engender a right first time culture, providing real benefits for users, decision-makers and the public purse.

## Right First Time – A Definition

### **'Right first time' means:**

- making a decision or delivering a service to the user fairly, quickly, accurately and effectively, applying the appropriate legislation, procedures and criteria and the rules of natural justice (avoiding conflict of interest or bias);
- taking into account the relevant and sufficient evidence and circumstances of a particular case;
- involving the user and keeping the user updated and informed during the process;
- communicating and explaining the decision or action to the user in a clear and understandable way, and informing them about their rights in relation to complaints, reviews, appeals or alternative dispute resolution;
- learning from feedback or complaints about the service or appeals against decisions;
- empowering and supporting staff through providing high quality guidance, training and mentoring.

## The size and scope of the problem

2. Original decisions by public bodies are the foundation of the administrative justice system<sup>1</sup>, which the AJTC is tasked with 'keeping under review'<sup>2</sup>. Promoting improvements in the quality of decision-making is therefore a high priority for the AJTC. It is widely recognised that poor initial decision-making within public bodies results in a negative experience for users of services, as well as constituting an unnecessary drain on public expenditure caused by appeals and complaints when things go wrong. The costs, both financial and social, of failing to get it right first time can be considerable.
3. From the visits conducted by members of the AJTC to tribunals and other dispute resolution bodies, it is evident that the root cause of many of the matters dealt with by a tribunal or an ombudsman

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<sup>1</sup> Tribunals, Courts and Enforcement Act 2007, Schedule 7, paragraph 13(4).

<sup>2</sup> Ibid, para 13(1)(a).

is either the failure to get a decision right first time, or failure to deliver a service and handle a complaint right first time within the organisation concerned. This is often exacerbated by a lack of organisational commitment to learn from mistakes and the absence of processes and procedures to listen carefully and respond to feedback.

4. Every day, public bodies make thousands of decisions that have an impact on people's lives. It is crucial that, as far as possible, the decisions made are right first time. These decisions cover a range of important issues, from benefit entitlement to immigration status, education to health and social care services in addition to tax, property, pensions and a wide variety of other services. Aiming to get it right first time should not just be a priority for large government departments but rather it is the responsibility of all bodies delivering public services, from small outsourced local services through to central government itself. Getting things right first time should be seen as a key element of public sector reform, with services focused on the needs of the user, and embedded in the culture and leadership of public bodies in order to create learning and sustainable organisations.
5. There is little evidence that the costs of failing to get things right first time are fully understood and quantified by public bodies. Instead the focus tends to be on budgets rather than on costs. The absence of cost awareness and the fact that some of the costs of poor decision-making fall on different government departments, tribunals and ombudsmen mean that there are often no financial incentives to ensure that decisions are right first time.

## Our objectives and approach

6. The objectives of this project were to:
  - investigate the benefits of a right first time approach for users of public services, for decision-makers and for taxpayers;
  - identify examples of initiatives that have improved the quality of initial decision-making; and
  - consider how feedback from redress mechanisms can improve decision-making within public bodies and help to prevent the same problems from recurring.
7. The approach to the project involved carrying out a literature review, examining specific case studies and conducting interviews. We have looked at two organisations in the public sector where initiatives are being taken to improve initial decision-making and reduce the number of appeals<sup>3</sup>. The case studies identify key lessons for all public bodies aiming to achieve high quality decision-making and service delivery.

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<sup>3</sup> Given the limited resources of the AJTC, it was not possible to conduct a comprehensive research study of the wide-ranging organisations covered by its remit. Rather the aim was to carry out two pilot studies where steps had been taken to make improvements with a view to learning lessons that could be applied more generally.

8. This report sets out the background to the debate about right first time; draws out the common themes and issues that emerged from the case studies; and summarises the benefits for users, decision-makers and the public purse of a right first time approach.
9. We argue that public sector organisations need to take a step back from their traditional concentration on processes and performance, and instead focus on the overriding need to improve the quality of decisions. Further, that there needs to be much broader concern for the costs of poor decisions to all affected rather than just narrow focus on departmental budgets. Our report is intended to encourage this change in culture by identifying the Fundamentals of a right first time organisation and highlighting Practical Steps for public bodies to follow. We make Recommendations for action where it is necessary to promote and support the initiative.
10. We would like to take this opportunity to record our thanks and appreciation to those who participated in the project, in particular to the people involved in the different case studies who agreed to be interviewed; to Mr Justice Nicholas Blake QC, President of the Upper Tribunal (Immigration and Asylum), for his observations from the perspective of the judiciary; and to Aileen Murphie from the National Audit Office for her invaluable advice and support.

# Background

11. The relationship between good quality original decision-making and the work of tribunals was explored in the report of the Review of Tribunals by Sir Andrew Leggatt<sup>4</sup> in 2001. It was then addressed in the UK Government's response to that report<sup>5</sup> in 2004 which led to the establishment of the Tribunals Service and the Tribunals, Courts and Enforcement Act 2007.

12. Leggatt cited the potential for the tribunal system to improve decision-making in public bodies and observed that *'providing feedback for decision-makers is an underdeveloped practice in many tribunals'*<sup>6</sup>. The subsequent White Paper reinforced the significance of the linkage and the need for improvements in decision-making, stating that:

*'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'*<sup>7</sup>.

13. Partington and Kirton-Darling took this theme forward in their review of research issues and research lessons. They stated that:

*'A key objective of the creation of the new Tribunals Service is to emphasise the importance of getting decisions right first time. One way to improve initial decision-making is by helping decision-makers understand where things may be going astray. Information about this can come from a number of sources, including tribunals'*<sup>8</sup>.

14. Similarly, in its review of tribunals in Wales, the Welsh Committee of the AJTC recognised the importance of using information from appeals to improve original decision-making<sup>9</sup>.

15. Commentators have also pointed out that the user of the administrative justice system can expect decision-makers to get things right first time. The office of the Parliamentary and Health Service Ombudsman (PHSO) lists 'getting it right' as a core tenet of all three of its sets of Principles, concerned respectively with good administration, good complaints handling and remedy<sup>10</sup>. In its report on the administrative justice system in Scotland, the Administrative

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<sup>4</sup> Sir Andrew Leggatt, *Tribunals for Users: One System, One Service*, London, TSO, 2001.

<sup>5</sup> Secretary of State for Constitutional Affairs, *Transforming Public Services: Complaints, Redress and Tribunals*, Cm 6242, 2004.

<sup>6</sup> Leggatt, op. cit., ch.12 and quoted in Nick Wikeley, 'Future Directions for Tribunals: A United Kingdom Perspective', in R Creyke, *Tribunals in the Common Law World*, Sydney, The Federation Press, 2008.

<sup>7</sup> Secretary of State for Constitutional Affairs, op. cit., 6.32.

<sup>8</sup> Partington M and Kirton-Darling E, *Research Issues Paper (1) Feedback*, (commissioned by the Senior President of Tribunals) available at [www.council-on-tribunals.gov.uk/adjust/item/tribunals\\_research.pdf](http://www.council-on-tribunals.gov.uk/adjust/item/tribunals_research.pdf).

<sup>9</sup> Welsh Committee of the AJTC, *Review of Tribunals Operating in Wales 2010*, Recommendation 21.

<sup>10</sup> <http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples>.

Justice Steering Group cited 'getting it right first time' as one of the key aims of administrative justice for citizens<sup>11</sup>.

16. Yet, while right first time has been established authoritatively as a key element of administrative justice, there has been a worrying failure on the part of organisations operating within the system to focus their efforts on what it means in practice or how to go about achieving it. To some extent, this may be because it is simply assumed that the *raison d'être* of public bodies is to deliver high quality services and to make decisions, and it is taken for granted that they will get these decisions right first time. Unfortunately, progress on improvement has been disappointing. Insufficient attention has been paid to identifying and addressing the wider problems and costs of poor decisions and poor service delivery. Even where research has been commissioned and a problem has been detected, the subsequent steps taken appear not always to have resolved the particular issues identified<sup>12</sup>.

## Evidence of poor decision-making – Reports

17. Three reports from the National Audit Office (NAO) have looked at the quality of decision-making in different fields<sup>13</sup>, each of which resulted in a hearing of the Public Accounts Committee (PAC) and received a response from the Government<sup>14</sup>. A fourth report, published in 2005, covered citizen redress<sup>15</sup>. At that time, NAO made what it describes as a '*conservative estimate*' that nearly 1.4 million cases were being received through redress systems in central government annually and these were processed by over 9,300 staff at an annual cost of £510 million. Additional expenditure incurred by central government was estimated at a minimum of £198 million<sup>16</sup>.

18. In addition to appeals, complaints – both in terms of volume and the way in which an organisation is equipped to handle them – constitute an important part of the concept of right first time. NAO noted that it was difficult to establish the true volume of cases, with around half of central government organisations unable to say how many complaints they had received. NAO made a number of recommendations including that:

- departments should seek to improve the quality of the services that they provide in the first place to citizens thus reducing the number and costs of complaints and appeals received; and

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<sup>11</sup> Administrative Justice Steering Group, *Administrative Justice in Scotland – The Way Forward*, July 2009.

<sup>12</sup> In 2005-06, Sir Leonard Peach, then non-Executive Director of the Appeals Service, was appointed to carry out a special study, reporting to the Secretary of State for Work and Pensions, the key objective of which was to improve the quality of DWP decision-making and reduce the volume of social security appeals, see <http://www.council-on-tribunals.gov.uk/publications/453.htm>.

<sup>13</sup> National Audit Office (a) *Progress in improving the medical assessment of incapacity and disability benefits*, HC 1141, 17.10.2003, (b) *Getting it right, putting it right: Improving decision-making and appeals in social security benefits*, HC 1142, 07.11.2003, (c) *Helping those in financial hardship: the running of the Social Fund*, HC 179, 13.01.2005.

<sup>14</sup> Partington and Kirton-Darling, *op. cit.* page 5.

<sup>15</sup> National Audit Office (d) *Citizen Redress: What citizens can do if things go wrong with public services*, HC 21, 09.03.2005.

<sup>16</sup> NAO (d) *op.cit.* See also NAO (c) for costs to the Department for Work and Pensions of errors and dealing with disputes about decisions.

- departments should use the information on why the appeals had been successful to improve decision-making and review arrangements wherever a significant proportion of appeals were successful.

Unlike the three earlier reports, the 2005 report did not go before a hearing of the PAC nor did it receive a response from the government of the time.

19. More recently, Professor Malcolm Harrington published his statutory Independent Review of the Work Capability Assessment<sup>17</sup> (used for Employment Support Allowance determinations). The report noted that '*the Jobcentre Plus Decision Makers do not in practice make decisions, but instead they typically 'rubber stamp' the advice provided through the Atos assessment*'<sup>18</sup>. He observed that no one in the system wanted to claim responsibility for making a decision, and that decision-makers need to be empowered to come to independent and considered conclusions.
20. Parliamentary Committees also act as a barometer of concern about the quality of decision-making across various organisations in the public sector. For example, the Home Affairs Select Committee has consistently queried whether the UK Border Agency manages to get things right first time. As recently as December 2010, while accepting that improvements had been made, it reported that more consistent and rigorous scrutiny of applications was necessary<sup>19</sup>. In its second report of 2009-2010, the Work and Pensions Committee considered that too many decisions made by the Department for Work and Pensions were either incorrect or unreasonably delayed<sup>20</sup>.

## Evidence of poor decision-making – Volume of appeals and complaints

21. In recent years, the number of cases going to appeal has increased dramatically. In 2009-2010 receipts at the Tribunals Service totalled 793,900, 26 per cent higher than receipts for the previous year<sup>21</sup>. In the first half of 2010-2011 the Tribunals Service received 409,400 claims<sup>22</sup> with over 800,000 claims expected over the course of the year.
22. The volume of cases now reaching tribunals within the Tribunals Service is illustrated by the breakdown by jurisdiction presented in Table 1.

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<sup>17</sup> Harrington M, *Independent Review of the Work Capability Assessment*, 23.11.2010.

<sup>18</sup> *Ibid*, page 10.

<sup>19</sup> Home Affairs Select Committee, *The Work of the UK Border Agency*, HC 587-1, 21.12.2010.

<sup>20</sup> Work and Pensions Committee, *Decision making and appeals in the benefits system*, HC 313, 9.02.2010.

<sup>21</sup> Tribunals Service, *Annual Report and Accounts 2009-2010*.

<sup>22</sup> Ministry of Justice, Quarterly Statistics for the Tribunals Service available at <http://www.justice.gov.uk/publications/quart-stats-tribunals.htm>. The Tribunals Service received 189,000 claims from April until June 2010, then 220,400 from July until September.

23. A similar pattern can be seen in relation to the number of complaints received by some public services ombudsmen. The Parliamentary and Health Service Ombudsman (PHSO) continues to see an increase in complaints about public bodies in relation to its Parliamentary work, receiving 8,543 complaints for 2009-2010, up from 7,990 in the previous year. A new system of managing NHS complaints meant that during 2009-2010 the PHSO received 14,429 NHS related enquiries – more than double the number compared with the previous year – and accepted 340 of these for investigation<sup>23</sup>. The Housing Ombudsman accepted 4,837 complaints for investigation, along with responding to an additional 2,841 enquiries, compared to 3,870 investigations and 2,884 enquiries during 2008-2009<sup>24</sup>.

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<sup>23</sup> Parliamentary and Health Service Ombudsman, *Making an Impact: Annual Report 2009-2010 and Every Complaint Matters: Annual Report 2008-2009* available at <http://www.ombudsman.org.uk>.

<sup>24</sup> Independent Housing Ombudsman Limited, *Annual Report and Accounts 2009-10 and Annual Report and Accounts 2008-9* available at <http://www.housing-ombudsman.org.uk/whoweare.aspx>.

**Table 1: Tribunals Service receipts and disposals 2009-2010**

<b>Jurisdiction</b>	<b>Receipts</b>	<b>Disposals</b>
Social Security and Child Support	339,200	279,300
Employment (Total)	236,100	112,400
Immigration and Asylum*	159,800	197,500
Mental Health	25,200	25,000
Tax first tier	10,400	5,600
Criminal Injuries Compensation	3,800	3,300
Upper Tribunal (Administrative Appeals)	3,700	3,600
Special Educational Needs and Disability	3,400	2,900
Asylum Support	3,100	2,800
War Pensions and Armed Forces Compensation	2,600	2,200
Employment Appeal	2,200	580
Adjudicator to HM Land Registry	2,000	2,100
Lands	1,100	1,000
Transport	640	670
Gender Recognition	290	280
Care Standards	240	230
Information	160	130
Primary Health Lists	140	78
Local Government Standards in England	72	70
Financial Services and Markets	25	27
Consumer Credit Appeals	13	12
Reserve Forces Appeals	11	13
Estate Agent Appeals	8	6
First Tier Immigration	7	8
Charities	5	7
Claims Managements Services	5	4
Gambling Appeals	1	1
Pensions	1	0
<b>Total</b>	<b>793,900</b>	<b>639,600</b>

\* Appeals dealt with immigration judges at the Asylum and Immigration Tribunal or the FTTIAC

24. This trend of increasing numbers of complaints is repeated in Scotland, where the Scottish Public Services Ombudsman received 3,307 complaints in 2009-2010 compared to 2,953 in 2008-2009<sup>25</sup>.
25. In Wales, the number of overall complaints has remained relatively static over the past year, with the Public Services Ombudsman for Wales handling 1,952 complaints in 2008-2009 and then 1,992 complaints in 2009-2010<sup>26</sup>. The number of complaints and enquiries received by the Local Government Ombudsman dropped slightly from 2008-2009 to 2009-2010, but the overall number of receipts remained high at 18,020<sup>27</sup>.

**Table 2: Top five government departments by number of complaints received by Parliamentary and Health Service Ombudsman<sup>28</sup>**

Department	Complaints 2009-2010
Department for Work and Pensions	3,000
HM Revenue and Customs	1,896
Home Office	952
Ministry of Justice	931
Department for Transport	353
Other	1,411
TOTAL	8,543

26. The official number of cases set out here in terms of appeals or other forms of dispute resolution are the 'tip of the iceberg'. It has been explained that:

*'...much administrative decision-making is hidden from public scrutiny. So, rather than as a pyramid or a ziggurat, it may be that the structure of initial decision-making and tribunals is better represented by the image of an iceberg – the visible upper tier, the (smaller) part of the iceberg, is above the waterline, while the mass of first instance decision-making in official agencies is hidden below the waterline and necessarily out of public view'<sup>29</sup>.*

27. Many users of public services, who are often the most vulnerable in society, do not have the information, support or resources to pursue their case even when decisions are incorrect or a complaint would be justified. Others feel there is little point in doing so as it may not make any difference. In addition, the tribunal figures noted above refer only to those cases handled by the Tribunals Service; there are other tribunals at both UK and local levels dealing with a range of matters, such as school admission appeals.

<sup>25</sup> Scottish Public Services Ombudsman, <http://www.spso.org.uk/statistics>.

<sup>26</sup> Public Services Ombudsman for Wales, *Contributing to Excellence Annual Report 2009-2010* available at <http://www.ombudsman-wales.org.uk/en/publications/?pID=257>.

<sup>27</sup> Local Government Ombudsman, *Delivering Public Value: Annual Report 2009-2010* available at <http://www.lgo.org.uk/publications/annual-report/>.

<sup>28</sup> Parliamentary and Health Service Ombudsman, op. cit.

<sup>29</sup> Wikeley, op. cit. page 176.

## Evidence of poor decision-making – Success rates on appeal

28. Together with the high volume of cases going to appeal, the high success rate for appellants suggests a widespread failure by public services to get it right first time. The concerns of the NAO, select committees and standing committees as noted above are reflected in these appeal success rates. For example, in 2009-2010, 38 per cent of appeals made to the Social Security and Child Support tribunal were upheld<sup>30</sup>, and in 2010 on average 27 per cent of appeals against the UK Border Agency were upheld<sup>31</sup>.
29. This high success rate is not limited to appeals against decisions made by executive agencies of central government. For example, in 2009 the AJTC reported an appellant success rate of 31 per cent at Education Admission Appeal Tribunals in England, and 63 per cent success rate for appellants at Traffic Penalty Tribunals<sup>32</sup>. Evidence also suggests that appeal success rates are even higher for appellants with legal representation<sup>33</sup>.

## Caveats on statistics

30. It would be wrong to jump to the conclusion that these figures automatically demonstrate cases where organisations are getting it wrong first time. While there is justifiable concern about the high level of success on appeal, the data here should be analysed with caution. Given the nature of the judgements that have to be made in many cases, especially those of a sensitive nature that require elements of subjectivity, there will always be cases that are won on appeal. This will be especially so where particular entitlement schemes permit a high level of discretion.
31. There are also cases where the simple process of clarifying evidence or correcting mistakes or misunderstandings can be enough to result in a successful appeal. Further, there can be cases where fresh evidence only becomes available at the hearing itself, which in turn impacts on the decision. It is worth remembering too that often a tribunal hearing will be the first opportunity that the appellant has been given to present their case directly to another person, rather than communicating through correspondence.
32. Our concern is with those cases that have gone to an appeal because of poor initial decision-making and/or where all the relevant evidence was not gathered, presented or fully taken into account in the first instance; and with cases that have gone all the way to an ombudsman because of poor service delivery and/or because the initial complaint was not handled fairly and appropriately.

## Possible reasons for poor decision-making

33. The reasons for poor decision-making are varied and numerous, and

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<sup>30</sup> <http://www.tribunals.gov.uk/Tribunals/Documents/Publications/tribs-q42009-10-statsc.pdf>.

<sup>31</sup> <http://rds.homeoffice.gov.uk/rds/immigration-asylum-stats.html>.

<sup>32</sup> <http://www.justice.gov.uk/ajtc/stats/index.htm>.

<sup>33</sup> See for example <http://www.justice.gov.uk/ajtc/news/450.htm>.

in this report we do not attempt to investigate or list these reasons exhaustively. However, some factors have been cited repeatedly as contributing to the failure of organisations to get things right first time, and they merit some discussion.

34. In the course of its work, the AJTC has identified a recurring problem of perverse incentives. These incentives, often caused or exacerbated by pressure on public bodies in times of economic austerity, can operate in a range of different ways. For example, in 2009 the AJTC was advised by the then President of the SENDIST Tribunal that local authority officers were sometimes motivated to encourage appeals as a means of unlocking additional cash locally in response to tribunal decisions. The high success rates of appeals (regularly 75 per cent<sup>34</sup>) reflect this unsatisfactory situation.
35. Similarly, the use of ill-conceived Key Performance Indicators that target the quantity rather than the quality of decisions may result in decision-makers focusing more on those targets than on delivering high quality decisions and services.
36. An issue that comes up in several reports and is referenced by commentators as part of the explanation for the high level of success rates on appeal is the sharp decline in government Presenting Officers appearing at tribunal hearings<sup>35</sup>. This means that Presenting Officers and the body they represent do not have the opportunity to support the case at a hearing nor to feedback the lessons learned from successful appeals to front-line decision-makers. Judge Robert Martin, President of the First-tier Social Entitlement Chamber, gave evidence on this matter to the Department for Work and Pensions Committee in 2009. He noted that the frequency of attendance by Presenting Officers at tribunal hearings in his jurisdiction had dropped from 40 per cent in 2000-2001 to 16 per cent. He stated that there was a 'crucial gulf' in knowledge because departments no longer knew why things had gone wrong<sup>36</sup>. This is a development that the AJTC, and the Council on Tribunals before it, observed during visits to Tribunals and has drawn attention to in successive Annual Reports<sup>37</sup>.

## Potential improvements in decision-making

37. We are pleased that the Senior President of Tribunals, in his Annual Report published in February 2011, notes that steps are being taken to address this knowledge gap. He explains that the Tribunals Service is collaborating both with the Department for Work and Pensions (DWP) and the tribunal judiciary to work on ways of ensuring that information and learning from tribunal cases is used to help DWP to get decisions right first time<sup>38</sup>.

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<sup>34</sup> Council on Tribunals, *Annual Report 2005-2006 and Annual Report 2006-2007* available at <http://www.council-on-tribunals.gov.uk/publications/688.htm>.

<sup>35</sup> Wikeley, *op. cit.* page 180 and Partington and Kirton-Darling, *op. cit.* page 4.

<sup>36</sup> House of Commons Work and Pensions Committee, *Decision Making and Appeals in the Benefits System*, HC 313, 9.02.2010, page 40.

<sup>37</sup> For example, Council on Tribunals, *Annual Report 2002-2003*.

<sup>38</sup> *Senior President of Tribunals' Annual Report – Tribunals Transformed*, pages 9-10, 2010.

38. In the same report, Judge Robert Martin states that pilots to improve the DWP 'reconsideration' process are yielding positive results for users, who can have their application looked at by the department for a second time instead of going to a tribunal. It is important that decision-making bodies create the opportunity to get things right second time, if not first time, as acknowledgement and remedy of mistakes before a case has to proceed to a tribunal or hearing is beneficial to all concerned. The Fundamentals and the Practical Steps outlined later in this document apply equally to original decision-making and to reconsideration processes within public bodies.
39. In the Independent Review of the Work Capability Assessment, Professor Harrington also notes that DWP has undertaken pilots to improve the quality of decision-making. He states that the impact of these pilots has been positive, resulting in better decisions and fewer appeals because the user has more confidence in the accuracy of the decision<sup>39</sup>. We are pleased to learn that further steps are being taken to extend the measures piloted, in particular the improved use of the 'reconsideration' phase of decision-making, across the country.
40. The AJTC greatly welcomes these initiatives, and will monitor their success and impact on the volume of appeals going to, and being successful at, tribunals<sup>40</sup>.

## The unknown cost of poor decision-making

41. The high volume of complaints and appeals has implications not just for the individuals concerned, but also for the taxpayer more generally, with the failure of public bodies to deliver services or get decisions right first time having significant consequences for the public purse. Financial costs will be incurred at different stages and by different organisations. These include the cost of service delivery or making of original decisions, the cost of review or reconsideration, the cost of appeal to the original decision-maker or complaint to the original service deliverer in addition to the cost of running the Tribunals Service and the offices of ombudsmen. In addition, there are of course the financial costs incurred by the appellant or complainant, and their family and/or advisers, in pursuing their case.
42. However, the precise financial cost of poor decision-making and poor service delivery is unknown. There are a number of reasons for this, including the tendency for public bodies to be more narrowly focused on their own budget than on wider costs. Further, public bodies undertake a wide variety of tasks, not all of which are related to decision-making or complaint handling. It can therefore be difficult for them to calculate the unit cost of making a decision or dealing with a complaint. For example, even when an organisation has dedicated teams to deal with complaints the budget will not

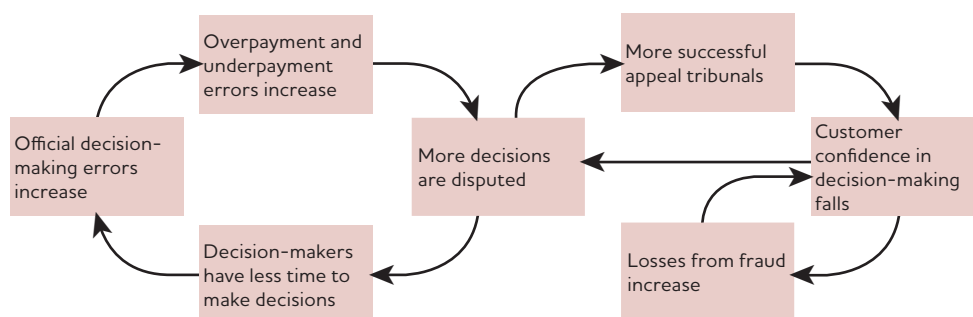
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<sup>39</sup> Harrington, op. cit., page 52.

<sup>40</sup> See also the *Professionalism in Decision Making and Appeals* programme run by the Disability and Carers Service: <http://www.dwp.gov.uk/about-dwp/customer-delivery/disability-and-carers-service/how-we-are-improving-our/accreditation-for-decision/> for description of programme.

necessarily reflect the full cost to the public body as other people in the organisation, including the Chief Executive, may be consulted in the process; such involvement is rarely costed.

43. The picture becomes more complicated still when an appeal or complaint progresses, as a substantial part of the overall cost is transferred, or simply off-loaded, to a tribunal or ombudsman. As a consequence, in cases where there has been poor decision-making or complaint handling, the full cost is rarely borne by the public body concerned. Similar difficulties arise in trying to calculate the unit cost of appeals handled by the Tribunals Service and complaints examined by an ombudsman.
44. Failing to get it right first time does not only generate direct financial costs. This diagram by the NAO demonstrates some of the indirect costs of failing to get it right first time, none of which make it any easier to calculate the overall cost to the taxpayer<sup>41</sup>.



45. The costs to individuals of the failure of public bodies to get it right first time are equally difficult to quantify. The mistake may cause direct financial hardship. For example, the individual concerned may lose out on a benefit payment. The knock-on financial effects of this can be significant, and some have been demonstrated in recent reports produced by the Parliamentary and Health Service Ombudsman<sup>42</sup>. The mistake may also impact upon the family life or mental health of an individual, causing stress and disruption. These costs are even harder to calculate, but no less significant.
46. These difficulties notwithstanding, the AJTC considers it imperative that organisations learn to account for the financial and non-financial costs of their mistakes. Not only is this information in the public interest, but a greater understanding and breakdown of the costs of decision-making, appeals and complaints would surely encourage organisations to take a closer look at improving their processes and their outcomes. Without this sort of evidence, not only is it difficult to calculate the cost of poor decision-making or complaint handling, but it becomes almost impossible to develop effective and cost efficient ways of helping to get it right first time.

<sup>41</sup> National Audit Office, *Getting It Right, Putting It Right*, HC 1142, 7.11.2003.

<sup>42</sup> See, for example, PHSO, *Putting Things Right: complaints and learning from DWP*, HC 367, 30.03.2008 and *Small Mistakes, Big Consequences*, HC 6, 19.11.2009.

# Case studies

## Introduction

47. There is broad consensus across the field of administrative justice and public administration that investing in improving the quality of original decision-making should be a key strategic priority for public bodies. Such investment would not only enhance the user's experience of public services but it would also reduce the number of unnecessary complaints and appeals.
48. All levels of government and those delivering public services have a responsibility and role to play in improving initial decision-making. This is particularly relevant at a time when appeals against decisions are growing and when there are severe cutbacks in public spending.
49. As part of this project, the AJTC looked at two particular public sector organisations where there was concern about the level and cost of appeals and where criticisms had been made about their performance – UK Border Agency (UKBA) and the Criminal Injuries Compensation Authority (CICA)<sup>43</sup>. We were keen to examine the steps that had been taken by UKBA (Midlands and East Region) and CICA to address the problems they faced and the results of their initiatives. We visited the organisations and interviewed key staff with a view to drawing out lessons that could be transferred across other public sector bodies (see Appendix 1 for a description of the case studies and action taken).
50. Many similar themes and issues emerged from the case studies and the interviews. The lessons learned are summarised below under relevant headings.

## Themes

### **Concern about performance**

51. For both bodies, a key incentive to take action was concern about the performance of their organisation and evidence that they were failing to get decisions right first time. In the case of UKBA, the Midlands and East regional office had an average allowed appeal rate in 2009 of 33 per cent (peaking at 43 per cent for September of that year) which was significantly higher than the national average of 28 per cent. At CICA, 4 per cent of decisions were being appealed, with 44 per cent of these appeals successful. This process was administratively burdensome and resource intensive, causing major concern to the Chief Executive.

### **Formulating and championing a strategic approach**

52. Managers at UKBA (Midlands and East) decided to formulate a strategy in order to address the high level of allowed appeals and

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<sup>43</sup> For example, PHSO, *Fast and Fair? A report by the Parliamentary Ombudsman on the UK Border Agency*, HC 329 8.02.2010, and National Audit Office, *Compensating Victims of Violent Crime*, HC 100 14.12.2007.

one of their senior managers was responsible for championing the project. It was the Chief Executive at CICA who herself led and promoted a strategic review of the organisation's performance, systems and procedures.

### **Involving and Engaging Staff**

53. UKBA (Midlands and East) gave their Case Workers the task of putting forward proposals to reduce their appeal rates, held frequent meetings of key staff to analyse findings and implement ideas, and set up working groups to address specific problems. They also met with staff to learn more about their working practices and training, mentoring and learning requirements. At CICA the Chief Executive looked at ways to improve the consistency of decisions on cases through staff meetings to help standardise procedures and practice, 'drop in' sessions for Case Workers, reviews of cases and better written guidelines.

### **Analysing Data**

54. Both organisations were keen to learn more from the data available. UKBA (Midlands and East) analysed decisions determined against them and produced monthly reports on the different aspects of the appeals. The data on cases was complemented by recording the allowed appeal rates for individual members of staff. Appeal rates for individual staff at CICA were also monitored. The information on cases and performance became more generally available within the organisations and made it possible to analyse trends and formulate evidence-based policies to address any problem areas, identify training needs and improve guidance.

### **Addressing performance issues**

55. The information collected on individual performance in UKBA (Midlands and East) was fed into monthly one-to-ones with staff and individual plans for improvements were developed, where necessary, and monitored monthly. Through this process it was possible to address training, mentoring and learning requirements. At CICA, proposed changes in procedures were complemented by new performance management processes where managers can review cases that go to appeal and the performance of individual staff. The Chief Executive was keen to engender what she described as a 'learning culture' within her organisation where all staff are encouraged to refresh their knowledge and skills on a regular basis.

### **Admitting and learning from mistakes**

56. Both organisations were keen to avoid cases going to a tribunal unnecessarily and looked at ways in which cases could be reviewed, rather than proceeding to a hearing, when fresh evidence became available. They have tried to move away from a blame culture when errors have been made. For example, the Chief Executive of CICA encourages staff, in cases where a genuine mistake had been made and discovered when the applicant appealed a decision, to 'hold their hands up', apologise and put things right rather than defending an appeal.

## **Representation at hearings**

57. The issue of representation of cases at hearings was raised by both organisations. At the UKBA (Midlands and East), the managers encourage representation of all asylum cases at appeal and increased representation across all appeal types. Specific submissions are written for all cases where no representation will be provided (for example, if the appeal is heard outside of the region). This practice was found to be invaluable in understanding why an appeal has been lost and in feeding back the learning to Case Workers. At CICA the distinction between Case Workers and Presenting Officers has been broken down, forming a new role of Senior Decision-maker. This has led to opportunities for mutual learning, improved preparation for cases and better feedback on appeals.

## **Working with others**

58. Both organisations need to work with a variety of partners in order to make their decisions, and so it is essential to maintain good working relationships and to develop mechanisms for ensuring that partners in the system don't come in the way of providing a timely and accurate service. The Chief Executive at CICA refused to allow built-in delays in the process – for example liaison with experts or other public agencies – to be seen as someone else's problem, and the organisation has developed protocols with the police for obtaining information necessary to process a claim. At UKBA (Midlands and East), it was also recognised that steps could be taken to ensure that the involvement of third parties (such as representatives) was well-managed and did not derail or slow down the process.

## **Positive Achievements**

59. As discussed below, both organisations have achieved positive results from the review of their processes. Both thought it was important to celebrate these achievements with staff and to recognise success.

## **Identifiable benefits**

60. We asked the staff we interviewed to identify any benefits that resulted from the review of their processes and procedures. They were positive in their responses saying that they had a greater pride in their job and that they felt that their job satisfaction, motivation and morale had increased. They also highlighted benefits to the organisation in terms of its reputation and credibility. Crucially they considered that users of the service were being better served and that 'claimants were getting an accurate decision, quicker'. They were also aware of the savings to the public purse that resulted from the reduction in appeals against their decisions.

## **Ongoing process**

61. Both organisations were clear that they were undergoing a process of change and not an event; that the changes they had identified and implemented should not be a 'one-off' but should be part of an ongoing process of continuous learning and improvement in order

to get decisions right first time. This was the type of culture they were keen to create and sustain.

### **Transferability of experience**

62. Although the circumstances of the two organisations we looked at were very different and are different from other parts of the public sector, staff from both thought that their experience was transferable to other areas of the public service. They stressed key issues like leadership, culture and focus on the users as well as the learning process they had gone through to make the improvements to their service.

### **Legislative design**

63. A more general issue raised in our discussions with the Chief Executive of CICA relates to the quality and clarity of legislation. It was her view that legislation should be '*designed and drafted with delivery in mind*' to avoid confusion for the public and those responsible for implementation and in order to assist greater consistency in judgement and decision-making within an organisation and, if a decision is challenged, at the appeal stage. Of concern were difficulties caused by the level of discretion in the current criminal injuries scheme which are compounded by the use of different rules being applied internally from those being applied on appeal.

## **Outcomes**

64. The results from the two initiatives studied are impressive. At the UKBA (Midlands and East), by April 2010 the allowed appeal rate dropped to 19 per cent of all cases in the region and to 15 per cent for all cases represented by a Presenting Officer in the region. This was considerably below their previous rates and lower than the national average. The office is now working on costings for processing decisions and appeals. In the meantime, UKBA is implementing a national allowed appeals reduction plan, as part of the Asylum Improvement Project<sup>44</sup>.

65. In terms of costs, when the National Audit Office (NAO) reported on CICA in 2007, the average cost per case was estimated at £400, and the cost per appeal going to the tribunal (including the cost to the Tribunals Service) was £1,483. When it conducted a follow-up study late in 2009, the NAO reported a reduction in the average cost per case to £271, and the cost per appeal to £1,053. This was as a result of the changes in policy and practice that had been implemented by the Chief Executive and her team as part of CICA's new Target Operating Model. Thus, in a two year period, CICA reduced the cost per application by nearly 36 per cent and has worked with the Tribunals Service to help them reduce the cost per appeal by nearly 32 per cent. It is anticipated that further changes to the process will result in additional savings of at least 10 per cent.

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<sup>44</sup> UKBA regional offices will be expected to report the findings from their analysis of allowed appeals approximately every three months and the information that they supply will be analysed centrally and returned to the regions for local action to be taken. Regional data will be aggregated to create a national picture and the national trend will then be used to inform a programme of action including amending guidance, instructions and training where necessary. Each UKBA region will be tasked with producing an action plan together with a trajectory for improvement.

# Fundamentals and Practical Steps

66. We have used the evidence from these case studies, other reports and research studies along with current data to establish the Fundamentals of right first time and to develop Practical Steps for decision-making organisations. These can be deployed in any of the wide range of bodies who deliver public services. We recognise that circumstances vary from organisation to organisation. However, we consider that all public bodies should seek to propagate professional and accurate decision-making, and that at the centre of this approach can be found elements common to all types of organisation.

## Fundamentals

67. A key finding of our study is that public sector bodies need to be learning organisations. This necessitates having the welfare of the user at the centre and being prepared to make an explicit, determined and sustained drive to get it right first time. With this in mind, we have identified the Fundamentals of right first time as:

- **Leadership**

Recruiting and appointing leaders of public bodies who are committed to taking a strategic and systemic approach, enabling them to learn and understand how to get it right first time.

- **Culture**

Creating the right culture to engender the ethos of right first time by putting the user at the centre of service delivery and learning from experience.

- **Responsiveness**

Responding effectively to user experience and/or feedback and anticipating as well as responding to changing circumstances and context.

- **Resolution**

Wherever possible putting things right at an early stage and resolving problems before passing them on to another organisation.

- **Learning**

Using a 'learning loop' to feedback information, monitor performance, learn from experience and improve initial decision-making.

68. These Fundamentals build on the AJTC's published Principles for Administrative Justice<sup>45</sup> (see Appendix 2) and those produced by the Parliamentary and Health Service Ombudsman (PHSO) (see Appendix 3)<sup>46</sup>.

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<sup>45</sup> AJTC, *Principles for Administrative Justice*, 2010.

<sup>46</sup> PHSO, *Principles of Good Administration, Principles of Good Complaint Handling, Principles of Remedy*.

## Practical Steps

69. Moving to practice, we set out below some basic Practical Steps that derive from our case study analysis. These should be adapted and followed by leaders of public bodies when they are reviewing their service and establishing a culture of right first time. Many of them can be taken in conjunction with LEAN techniques, helping to improve both the level of service provided while also helping to reduce costs<sup>47</sup>.

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<sup>47</sup> LEAN is a set of techniques, now widely deployed in UK government departments, to enable them to focus clearly on what their customers require and thus systematically remove or reduce internal activities that provide no benefit to customers. LEAN was first developed for use in manufacturing but has been modified for use in service organisations.

## Practical Steps

### Getting Started

- make the objective of getting it right first time a core value of the organisation;
- appoint a senior champion – committed to the objective of right first time – and establish a team responsible for taking the initiative forward;
- highlight and promote the benefits of getting it right first time for all staff in the organisation;
- don't be prejudiced or constrained by the way in which things have been done in the past or by prevailing assumptions and perceptions;

### Analysis

- conduct a thorough analysis of internal systems, procedures and decision-making structures as well as feedback and review mechanisms;
- compile and analyse accurate and up-to-date information and statistics on complaints, reviews and/or appeals and then identify trends so that actions can be based on facts and evidence and not assumptions or perceptions;
- undertake root cause analysis of significant first instance decisions that are successfully appealed, of significant complaints that are upheld by an ombudsman and of serious untoward incidents (SUIs);
- quantify the organisational and other costs of not getting it right first time and dealing with complaints, reviews or appeals and communicate this information to staff;

### Action

- once key issues have been identified, bring all the relevant people involved together and engage them in proposing and creating solutions;
- when actions and timescales have been agreed, communicate these, and the reasons for the changes, effectively to all staff concerned;
- identify and involve key external stakeholders, as appropriate, and communicate any process changes to them;
- design open and transparent performance measures for all relevant staff to reinforce the objectives of getting it right first time and monitor performance routinely (e.g. make it part of everyone's job description to engage and communicate effectively with the user and to settle problems wherever possible rather than passing them on);
- promote and publicise whole system timeline performance measures that reflect the 'end to end' process and measure how long it takes from receiving an application or appealing a decision or receiving a complaint to a determination being made, and track the quality of service at every stage;
- train, support and empower staff to make decisions themselves where appropriate, admit mistakes when they occur and engender a learning culture;

### Reflection

- monitor and feedback progress and achievements to staff and others;
- undertake regular checks to ensure clear systems, procedures, decision-making structures and feedback mechanisms are in place;
- don't treat the process as a 'one-off'; be flexible and recognise the need to make further changes and adapt to different circumstances if necessary;
- continue to be a learning organisation by demonstrating how lessons have been learned and the actions that have been taken as a result of feedback;

### And don't forget ...

- make sure people do what they say they will do and on time;
- address under-performance;
- celebrate success.

# Recommendations

70. In this report, we have highlighted the Fundamentals of right first time and the Practical Steps that can be taken by public bodies in reviewing their organisations. Without doubt there are real and tangible benefits that can be gained in adopting this approach, both in terms of experience and outcome, for users, decision-makers and the public purse. We move now to making Recommendations that are addressed to public bodies, agencies, governments, parliaments and tribunals across the UK, all of which have a crucial role to play in ensuring that right first time is promoted, supported and embedded in the culture and practice of administrative justice.

## Recommendations to Original Decision-Makers

71. Services are delivered and administrative decisions are made in relation to individual citizens by a whole host of public bodies ranging from large government departments to small, local outsourced service providers. In these Recommendations we label all such bodies, including local authorities, as 'original decision-makers'. Such bodies should want to deliver high quality services and get their decisions right first time so as to maximise their own efficiency and effectiveness, to minimise the cost and burden to ombudsmen, tribunals and other parts of the public sector and, of course, to improve the service they deliver to citizens.

72. We shall be sending this report to those decision-makers who generate the majority of appeals to tribunals and complaints to public service ombudsmen. We hope that they will learn from the case studies we have highlighted and recognise the many benefits of introducing a step-change in the quality of their decision-making and complaint handling.

73. The evidence of this report, not least the high rates of successful appeals, suggests that many original decision-makers will need to adopt a structured and strategic approach, putting far more effort into getting it right first time. However, while we have focused on improving the service public bodies deliver to citizens, we also acknowledge that costs and burdens can also be increased by those who make unreasonable demands on services or who make wholly unmeritorious appeals or complaints.

### Original decision-makers should:

- carry out a review of their systems, procedures and decision-making structures, using the Practical Steps guidance, to ensure that they are doing all they can to get decisions right first time;
- monitor and publicise to both staff and the public the number of complaints, reviews and appeals annually;
- audit and report the cost of handling appeals, complaints and reviews annually;
- send Presenting Officers (or their equivalent) to appeals unless they are able to demonstrate that it would be disproportionate to do so; and write specific submissions for cases being heard where no representation is going to be provided;
- undertake root cause analysis of significant successful appeals and complaints as well as serious untoward incidents (SUIs);
- demonstrate how they have fed back the learning from such root cause analysis of complaints, reviews and appeals, both internally and externally, on an ongoing and annual basis;
- demonstrate what actions they are taking to improve performance and get decisions right first time; and
- have published policies that address potential abuse of relevant appeals and complaints systems or unreasonable behaviour.

## Recommendations to Government

74. Improving the standard of administrative decision-making should be seen as a priority across government. At a time when government must focus simultaneously on cutting costs and providing a better service, the quality of decision-making is an obvious target. The Cabinet Office is ideally placed to act as a champion for right first time, using its central position to promote and coordinate initiatives that will encourage other government departments and decision-making organisations to take the matter seriously.
75. We also consider that the Ministry of Justice (either directly or through HM Courts and Tribunals Service) has a key role to play in helping decision-makers to get it right first time. We were pleased to note the comments made by Jonathan Djanogly MP, Parliamentary Under Secretary of State, in his appearance before the Justice Committee that: '*... we want better decisions to be taken at an earlier stage so that fewer appeals come through... I absolutely agree that we have to (get DWP to) do more right earlier on*'<sup>48</sup>.
76. To date, the UK Government's main approach to reform and reduction of costs in the field of administrative justice has been to integrate the Tribunals Service with HM Courts Service and to propose the introduction of fees in certain areas of Tribunal work<sup>49</sup>. In its responses to consultation exercises, the AJTC has expressed concerns about the impact of fees and the potential denial of access to justice for the most vulnerable citizens<sup>50</sup>. We contend

<sup>48</sup> Uncorrected transcript of oral evidence given by Jonathan Djanogly to the Justice Committee, 16 February 2010, available at <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmjust/uc681-vi/uc68101.htm>.

<sup>49</sup> <http://www.justice.gov.uk/about/hmcts/> and <http://www.justice.gov.uk/consultations/consultations-CP10-10.htm>.

<sup>50</sup> <http://www.justice.gov.uk/ajtc/news/news.htm>.

that charging fees as a way of reducing the volume of cases fails to address the root cause of the high and growing level of cases going to appeal, namely the failure of public bodies to get it right first time.

77. Ministry of Justice (MoJ) Ministers have a direct interest in reducing the volume of appeals and the costs of running tribunals. A coherent administrative justice policy is needed so that MoJ can bring real pressure to bear on all government departments and the other public bodies which are generating the large caseload volumes for which MoJ is now ultimately responsible. Proposals to improve original decision-making have the potential to make significant cost savings for the public purse, and especially for MoJ. They could also bring real benefits to users of public services and help to improve their trust and confidence in the process. We believe that there should be clear and detailed commitments in MoJ plans to work collaboratively with other government departments to achieve 'better with less' in the administrative justice system. The objectives for the recently formed HM Courts and Tribunals Service include a promise to '*work with government departments and agencies to improve the quality of their decision making in order to reduce the number of cases coming before courts and tribunals*'. We welcome this positive statement of intent, but note with concern that the first Business Plan for the organisation does not specify how this objective will be achieved<sup>51</sup>.

78. These Recommendations should also be adopted by relevant Cabinet Secretaries or Ministers within the Scottish Government and the Welsh Government and adapted to meet their own circumstances<sup>52</sup>. For example, there may be an opportunity to embed the principle of right first time in the common complaints systems (coordinated by the relevant public services ombudsman) that are planned to operate across the public sector in Scotland and Wales.

79. Moving to costs, we have argued that there is currently little or no direct financial or other incentive for public bodies to improve the quality of their decision-making and the extent to which they get it right first time. This is compounded by the paucity of effective channels for mistakes to be reviewed, analysed and understood and for lessons to be learned and action taken in order to prevent repetition. Rather, it can be argued, there is a tendency for public bodies to treat appeals as the responsibility of tribunals with little or no interest in the outcome (whether for the individual case or more generally) or in the costs involved. There is limited evidence too of public bodies learning from complaints that have been made about them.

80. The lack of financial incentives for original decision-makers is a particular concern. Although other government departments are required to make some financial contribution towards the costs of running tribunals, this appears almost entirely to be based on caseload forecasts (which can be significantly inaccurate) and not

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<sup>51</sup> HM Courts and Tribunals Service, *HM Courts and Tribunals Service Business Plan 2011-2011*.

<sup>52</sup> For example, Scottish Government, *Right First Time, a practical guide for public authorities in Scotland to decision-making and the law*, 23.02.2010.

to be in any way related to the outcome of cases. We favour the adoption of a 'polluter pays' approach to this issue, as others have proposed. In its Access to Justice Review, published in November 2010, the Law Society of England and Wales argued that:

*'Public authorities, such as the UKBA, local authorities and others whose administrative decisions are overturned by courts and tribunals should be required to pay the costs of the claimant to the legal aid fund, together with a surcharge.'*<sup>53</sup>

81. In its recent report on proposed changes to legal aid<sup>54</sup>, the Justice Committee agreed with this approach, considering that it could bring benefits across the public sector.
82. Our specific focus here is the cost of running tribunals. There are potentially substantial administrative and judicial savings that could be generated if original decision-makers were to get their decisions right first time. If they fail to do so, then a strong case can be made for holding them responsible for paying the full cost of subsequent proceedings where their decisions are overturned.
83. Although we accept that considerable effort will be needed to develop workable funding models, we believe that – as a matter of principle and incentive – original decision-makers should contribute to the costs of running tribunals by direct reference to the actual volumes of appeals. We further believe that the contributions should normally be increased where their decisions are overturned on appeal. One option, for example, is that a case fee should be paid by the decision-making department when each appeal is lodged, and then adjusted upwards for each appeal which is successful. This is broadly the model adopted by the Financial Ombudsman Service (FOS) which is considered to have worked well and acts as a real incentive for financial institutions to get decisions right first time and avoid cases reaching the Ombudsman. The objective here is not to save the full cost of all appeals, which is unrealistic, but to create better incentives to align the interest of justice with the interests of the decision-making department.

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<sup>53</sup> The Law Society of England and Wales, *Access to Justice Review 2010*, page 20.

<sup>54</sup> House of Commons Justice Committee, *Government's Proposed Reform of Legal Aid*, HC 681-1, 30.3.2011, pages 26-27.

<p><b>The Cabinet Office (Efficiency and Reform Group) should:</b></p> <ul style="list-style-type: none"> <li>actively promote right first time to government departments as a key component of the wider ‘better for less’ agenda;</li> <li>work in conjunction with the Ministry of Justice to implement recommendations made below in relation to costs.</li> </ul>
<p><b>The Lord Chancellor should:</b></p> <ul style="list-style-type: none"> <li>make it a priority of the MoJ’s own strategic programme to improve original decision-making in public bodies, with the explicit aim of reducing the volume of appeals caused by poor decision-making by 20 per cent by 2015;</li> <li>promote the Practical Steps set out in this report to all original decision-makers.</li> </ul>
<p><b>Ministers in Scottish and Welsh Governments should:</b></p> <ul style="list-style-type: none"> <li>adapt these recommendations to their own circumstances, focusing particularly on embedding right first time into their common complaints policies.</li> </ul>
<p><b>The Lord Chancellor, together with the Cabinet Office (Efficiency and Reform Group) should:</b></p> <ul style="list-style-type: none"> <li>commission a project, with advice from the National Audit Office, to develop funding models for ensuring that the costs of poor decision-making are borne by the department or public body concerned. This should be done in collaboration with the relevant audit agencies in Scotland and Wales;</li> <li>align this project with the current policy initiatives aimed at introducing fees for Tribunal cases and that any fees for individual appellants should only be introduced as part of wider package which also recovers outcome-related income from departments and public bodies.</li> </ul>

## Recommendations to Parliamentary Bodies

84. We have referred to the broader objective of improving the quality and clarity of legislation which sets out the criteria for entitlements, the nature and extent of discretions or the scope for appeal or challenge. Concrete action is needed to ensure that the rules are designed and drafted with delivery in mind.

85. We believe that the Impact Assessment for any administrative justice measure<sup>55</sup> which is introduced into the UK Parliament should be extended to include a Delivery Assessment from the relevant Secretary of State setting out how it is expected the measure will work in practice, and that this should be done with right first time firmly in mind (e.g. simplicity for users and operators). This should incorporate confirmation that organisations responsible for delivery have been consulted about the practicalities and about the detailed drafting of the provisions.

86. We believe that parliaments across the UK also have a wider and important role to play in stimulating and scrutinising right first time initiatives.

<sup>55</sup> By “administrative justice measure” we adopt the same approach as the Tribunals, Courts and Enforcement Act 2007 to include any Bill or Statutory Instrument introduced by government under which decisions of an administrative or executive nature will be made in relation to particular persons.

<b>The Public Administration Select Committee should:</b>
<ul style="list-style-type: none"> <li>• undertake an enquiry to review progress with right first time initiatives across the public sector as a whole.</li> </ul>
<b>Select Committees and Committees in Scotland and Wales should:</b>
<ul style="list-style-type: none"> <li>• examine the scope for improving the quality of decision-making and complaint-handling within the departments they oversee.</li> </ul>
<b>Justice Committees in the House of Commons and the Scottish Parliament should:</b>
<ul style="list-style-type: none"> <li>• question Ministers about progress with their strategic programme to reduce the volume of tribunal cases through improved original decision-making.</li> </ul>

## Recommendations to Tribunals

87. Tribunals exist to resolve appeals and other disputes which are generally brought forward on a case-by-case basis. Their function is to do justice, not to change the overall approach of the original decision-makers. Nevertheless – especially in the absence of either Presenting Officers or senior staff who could introduce changes – tribunals are well-placed to spot systemic problems, especially the same mistakes being made time after time.

<b>Tribunals should:</b>
<ul style="list-style-type: none"> <li>• separately highlight situations in their formal decisions where cases exhibit serious systemic problems which the Tribunal considers that the original decision-maker should address;</li> <li>• ensure that serious systemic issues are included in contributions to the Annual Report of the Senior President of Tribunals with a recommendation that MoJ seek rectification from the relevant public body as appropriate.</li> </ul>

## Conclusion

88. Adoption of these Recommendations would provide a clear message that public bodies, governments, parliaments and tribunals in the UK are serious about getting decisions right first time. There is much to be gained in cost terms, a factor that is particularly important within the context of the current economic environment. But it would also have a positive impact on the quality and delivery of public services, enhance public trust and confidence in public services and public sector decision-makers, as well as improve job satisfaction and staff morale. Further, it would avoid the need for users to go through the lengthy and stressful process of challenging decisions or making complaints when these could be avoided. This is an opportunity that should not be missed.

89. In six months we will be writing to all of the bodies addressed in our Recommendations to see what steps have been taken to implement the Recommendations and to improve decision-making.

# Appendix 1:

## Case studies

### (i) UK Border Agency

The UK Border Agency (UKBA) is responsible for securing the UK border and controlling migration. They enforce immigration and customs regulations and consider applications for permission to enter or stay in the UK, and for citizenship and asylum. Their casework includes visas, asylum applications, deportations and managed migration. The latter refers to grants for the right to remain, settlements, worker registration and citizenship.

The work of the UKBA can be highly sensitive with decisions being made that have a major impact on people's lives.

Various measures have been taken by the UKBA to improve its performance and we were particularly interested to learn more about a pilot study carried out by a team in the Midlands and East Region who were concerned about the level of allowed appeals in their region<sup>56</sup>.

The pilot study began in response to concern that the allowed appeal rate (namely the percentage of successful appeals against the decision of UKBA Caseworkers in the region) was significantly higher than the national average of 28 per cent for 2009. In the Midlands and East Region their annual average rate was 33 per cent peaking at 43 per cent in September of that year. It was said to be a concern to managers *'as our focus is to ensure the right decision is made first time'*<sup>57</sup>. In response they formulated a strategy in September 2009, overseen by the Assistant Director involved, with the objective of reducing the number of allowed appeals in the region to 25 per cent by December 2009 and 20 per cent by March 2010.

The actions they took to achieve their aim are summarised below. They:

- tasked their Asylum and Appeals Senior Caseworkers to produce a plan of how they could reduce the allowed appeal rate;
- analysed their allowed determinations, producing monthly reports;
- held bi-weekly meetings between the Assistant Director and Asylum and Appeals Senior Caseworkers in order to focus on findings and implement ideas;
- kept individual allowed appeal rates for Case Owners, EO Caseworkers, Presenting Officers and Hybrid Officers (Case Owners/Presenting Officers). This data was fed into monthly 1:1s with those concerned and individual plans for improvements were developed and monitored monthly;
- set up working groups for countries where particular problems were identified which included staff from each Asylum and Presenting team. These were led by a Senior Caseworker;

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<sup>56</sup> Home Office, UK Border Agency, Midlands and East Region, *'Allowed Appeals Strategy and Findings September 2009-April 2010'*, May 2010.

<sup>57</sup> Op. Cit., p.2.

- met with staff with a low allowed appeal rate to learn how they worked and used this information to highlight training, mentoring and learning requirements;
- set up training on Article 8 of the ECHR, developed a CMR workshop and new forms and put a training plan in place for deportation case law and other training needs;
- set up a Quality Pilot assessing 50 cases at Senior Caseworker level;
- represented all Asylum cases at appeal and increased representation across all appeal types;
- wrote specific submissions for cases being heard outside of the region where no representation was going to be provided; and
- tracked cases assessed by the Quality Audit Team.

The report notes an initial delay in seeing a positive impact from the above actions. However, by April 2010 the allowed appeal rate had dropped to 19 per cent for all cases decided within the Midlands and East Region and to 15 per cent for those cases represented in the region.

The key lessons learned from this pilot study were used to identify the next steps, which are quoted in full below. These included specific measures to improve performance and processes as well as other measures.

#### **‘Next Steps:**

##### **Performance and Processes:**

**Number of PO submissions:** continue with specific submissions for cases heard out of region and not being represented.

**Hybrid:** look into our letters produced by the Hybrid Team as they have the most success in court and tend to be shorter.

**Focus Analysis:** analyse specific country determinations in more depth.

**Performance Management:** continue to provide monthly feedback to Team Leaders on decision-makers and presenting staff success rates. Use team information to feed into league tables to assist with performance management.

**Recognise success:** continue with recommendations for recognition letters from the Deputy Director for those who are performing well.

**Staff engagement:** meet every quarter with top performing staff in this area to understand the performance and share success with all staff.

**Policy:** work with and feed into policy and process for any issues which are recognised as a barrier to success.’

Other measures include working with the local Judiciary, tribunal administrative staff and representatives on the process for adjournments of cases; and where cases are adjourned working with them to ensure that the cases are dealt with quickly and as effectively as possible without long delay in the re-listing of cases. In addition, they are working to ensure minimum delay in promulgation of Determinations by the Judiciary in cases where appeals have been heard.

We were keen to learn more about this pilot study and conducted interviews with the Assistant Director involved in the pilot, her successor, and members of staff involved including Senior Case Workers, Case Owners and Presenting Officers. We explored their respective roles in the pilot, any difficulties or barriers in undertaking the study as well as implementing the key recommendations, the main lessons and benefits and whether their experience of getting it right first time was transferable to other public sector organisations.

There was considerable consistency in the responses we received from the staff interviewed and considerable pride too in the success they had achieved in reducing their allowed appeal rate. The initiative was the idea of one specific manager, the Assistant Director, who was responsible for leading and championing the project. Her role has been inherited by her successor who has the same enthusiasm for maintaining the success of the project and implementing the recommendations.

There were clear challenges in undertaking the pilot study and in introducing new performance management processes. This was especially so as it coincided with a time of change in the organisation where staff had to re-apply for their own positions. However, there was a consensus amongst staff that the pilot had been worthwhile. They welcomed the opportunity to be directly involved in tackling the problems identified and in suggesting solutions, and they liked the way in which the working groups brought people together and decisions were communicated. They were of the view that staff morale and job satisfaction had increased as a result of this process and the success achieved.

Not only did staff identify benefits for themselves, but they thought the reputation and credibility of the organisation had improved. Crucially they considered that users of the service were being better served and that *'claimants were getting an accurate decision quicker'*. They were also aware of the savings to the public purse that resulted from the reduction in appeals against their decisions.

There were clear views as to the fundamentals of right first time and to the transferability of their experience.

## (ii) Criminal Injuries Compensation Authority

The Criminal Injuries Compensation Authority (CICA) is a non-departmental public body that administers a compensation scheme for injuries caused to victims of violent crime in Great Britain. The scheme was set up in 1964 and was subsequently amended in 2008<sup>58</sup>. Each year, around 65,000 applications are received by CICA and nearly £200 million is paid in compensation payments.

The rate of appeal against CICA decisions is relatively low at 4 per cent, but the organisation is nevertheless concerned that around 44 per cent of these appeals are successful.

In order to explore the reasons for the high appeal success rate and what the organisation has done and is doing to address the issue, we

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<sup>58</sup> See CICA, *Criminal Injuries Compensation Scheme 2008 – A Guide*, 2008.

interviewed the Chief Executive<sup>59</sup>. She said that the core purpose of the organisation is to receive claims for compensation, to consider whether they are eligible, and, if so, to pay the appropriate compensation. However, CICA sometimes finds it difficult to carry out in practice the intentions behind the legislation, given both its vagueness and complexity. Also, given the nature of the applications received, there will be elements of subjectivity and a considerable amount of discretion required in making decisions about eligibility.

On taking up her position, the Chief Executive examined the existing processes and procedures for handling applications and identified various ways in which they could be improved. For example, case handlers used to send out a form requesting information about a specific application from the police; if no reply was received then another request was sent out the following month and so on. This could lead to considerable delays and costs. Now only one form is sent out and if there is no response then direct contact is made by phone to obtain the information.

Another source of delay is the need to gather medical information about particular cases from GPs, dentists and hospitals. Although the scheme actually says the onus is on the applicant to provide this information, a great deal of time and resource is spent by the CICA in pursuing this information. Such practice is reinforced by the Tribunals Service who ask the CICA to chase the information. Failure to provide medical information can lead to adjournment of cases and further delay and cost. The CICA is keen to address this issue and to remind those involved of the requirements of the scheme. They have set up a specific project to plan a transition from the current practice.

There is also considerable discretion in the current scheme which can cause problems, compounded by the use of different procedures in different organisations. While the Chief Executive has introduced a points system for discretionary matters, the Tribunals Service is not obliged to follow this system. She considers there would be value in the scheme being more explicit about eligibility criteria and greater consistency between the criteria and rules being applied by the CICA and the judges who hear appeals.

In the absence of clarity in the legislation, the Chief Executive has sought to improve the consistency of decisions on cases through improving written guidelines for staff; staff meetings to help standardise procedures and practice; 'drop in' sessions for Case Workers held by the internal operations policy team working with the legal team; and reviews of cases by the operations policy team where a sample of cases is taken to decide whether the guidance has been applied consistently and fairly. The aim of such changes was to engender a learning culture where everyone is encouraged to refresh their knowledge and skills.

Another reform has been to break down the old division between Case Workers and Presenting Officers. Their respective titles have been changed to Senior Decision-makers and the distinction between the two positions reduced. This has allowed for greater mutual learning, improved preparation for cases and better feedback on appeals.

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<sup>59</sup> The Chief Executive was appointed in August 2009.

The Chief Executive has also encouraged staff, in cases where a genuine mistake has been made and is discovered when the applicant appeals a decision to 'hold their hands up' rather than defending an appeal. Where new evidence becomes available then the case should be reconsidered again before going through the appeal process. These changes in practice mean that users of the service do not have to go through an unnecessary appeals process and there are obvious savings in time and costs.

The changes in procedures outlined were complemented by the introduction of new performance management processes. For example, if a case goes to appeal there is a review and Regional Managers look at feedback from appeals in order that lessons are learned. The system monitors the number of appeals or reviews against individual Case Workers and Managers can adjust the rate at which they sample an individual's cases depending on performance.

The Chief Executive discussed other ways in which she would wish to improve the system through learning lessons from complaints and the number of appeals received against decisions. She is of the view that to enhance the opportunity for any organisation to get their decisions right first time requires greater clarity in the founding legislation and application of agreed criteria and rules. If there is a desire for greater discretion and subjectivity in a system then it has to be accepted that the trade-off might be a higher rate of allowed appeals.

## Appendix 2:

# AJTC Principles for Administrative Justice

**Principle 1:** The administrative justice system should work well for you and, where necessary, help to resolve disputes that arise. You are entitled to courtesy and respect at all times.

**Principle 2:** Decisions should be right first time. When poor decisions are made, it should be easy for you to seek another answer or redress. You should be able to complain or appeal to someone in the organisation other than the original decision-maker. If the organisation does not put things right, you should be able to ask for independent reconsideration, for example by a tribunal or an ombudsman.

**Principle 3:** You should be told how to challenge a decision you disagree with. No obstacles should be put in your way if you want to do so. Organisations should aim to resolve matters as quickly as possible. You should be given information and help to support you in presenting your case.

**Principle 4:** Decisions must be taken quickly. They must conform with the law and be made without bias or discrimination. The reasons for all decisions should be fully explained to you.

**Principle 5:** The process for dealing with your case should be straightforward and explained to you clearly. Decisions made in your case should be consistent with others made in similar situations. You should be given the reasons for decisions in plain language.

**Principle 6:** Organisations should behave in a competent and professional manner. Systems should be as simple to use as possible. The approach of decision-makers should be balanced and fair.

**Principle 7:** Organisations should adhere to high standards of administration. They should take account of user views when designing procedures. They should learn from mistakes and take steps to avoid problems arising in the future.

## Appendix 3: PHSO Principles

Three sets of Principles:

- Principles of Good Administration
- Principles of Good Complaint Handling
- Principles of Remedy

‘These three sets of Principles outline the approach we believe public bodies should adopt when delivering good administration and customer service, and how to respond when things go wrong. They underpin our assessment of performance, our vision of good complaint handling and our approach to putting things right.’

‘The same six key Principles apply to each of the three documents. These six Principles are:

1. Getting it right
2. Being customer focused
3. Being open and accountable
4. Acting fairly and proportionately
5. Putting things right
6. Seeking continuous improvement.’

# Bibliography

Administrative Justice Steering Group (2009), Administrative Justice in Scotland – The Way Forward

AJTC (2010), Principles for Administrative Justice

AJTC Welsh Committee (2010), Review of Tribunals Operating in Wales

Cabinet Office (2009), Listening to the front line: Capturing insight and learning lessons in policy making

Council on Tribunals, Annual Report of the Council on Tribunals 2002-2003, 2005-2006 and 2006-2007

Department for Work and Pensions Committee (2010), Decision making and appeals in the benefits system (HC 313 Session 2009-10) (See also Government's response, 7 April 2010)

Department for Constitutional Affairs (2004), Transforming Public Services: Complaints, Redress and Tribunals (CM6243)

Harrington M. (2010), Independent Review of the Work Capability Assessment

HM Courts and Tribunals Service (2011), Business Plan

Home Affairs Select Committee (2009), The work of the UK Border Agency (HC 105-1 Session 2009-10)

Independent Chief Inspector of UK Border Agency (2009), Asylum: Getting the balance right?

Independent Housing Ombudsman Limited, Annual Report and Accounts 2008-2009 and 2009-2010

Justice Committee (2011), Government's Proposed Reform of Legal Aid (HC 681-1 Session 2011-12)

Law Society of England and Wales (2010), Access to Justice Review

Leggatt A. (2001), Tribunals for Users: One System, One Service

Local Government Ombudsman (2007), Local partnerships and citizen redress

Local Government Ombudsman (2010), Delivering public value: Annual Report 2009-2010

National Audit Office:

(2000), Compensating Victims of Violent Crime (HC 398 Session 1999-2000);

(2003), Progress in improving the medical assessment of incapacity and disability benefits (HC 1141, Session 2002-03);

(2003), Getting it right, putting it right: Improving decision-making and appeals in social security benefits (HC 1142, Session 2002-03);

(2005), Citizen Redress: What citizens can do if things go wrong with public services (HC 21 Session 2004-05);

(2005), Helping those in financial hardship: the running of the Social Fund (HC 179 Session 2004-05)

(2008), Feeding back? Learning from complaints handling in health and social care (HC 853 Session 2007-08);

(2008), Department for Work and Pensions: Handling Customer Complaints (HC 995 Session 2007-08)

#### Parliamentary and Health Service Ombudsman:

(2005), Tax Credits: Putting Things Right (HC 124 Session 2005-06);

(2009), Putting Things Right: Complaints and learning from DWP (HC 367 Session 2008-09);

(2009), Principles of Good Administration, Principles of Good Complaint Handling, Principles of Remedy

(2009), Every Complaint Matters: Annual Report (HC 786 Session 2008-09)

(2009), Small Mistakes Big Consequences (HC 6 Session 2009-10)

(2010), Fast and Fair? A report on UKBA (HC 329 Session 2009-10);

(2010), Making an Impact: Annual Report (HC 274 Session 2009-10)

Partington M. and Kirton-Darling E. (2007), Research Issues Paper (1): Feedback

Public Accounts Committee (2009), Management of Asylum Applications (HC 325 2008-09)

Public Services Ombudsman for Wales (2010), Contributing to Excellence: Annual Report 2009-2010

Scottish Government (2010), Right First Time: a practical guide for public authorities in Scotland to decision-making and the law

Senior President of Tribunals (2011), Tribunals Transformed

Tribunals Service (2010), Annual Report and Accounts 2009-2010

Wikeley N. (2008), Future Directions for Tribunals: A United Kingdom Perspective, in Creyke R, Tribunals in the Common Law World

Work and Pensions Committee (2010), Decision making and appeals in the benefits system (HC 313 Session 2009-10)





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