

Securing Fairness and Redress: Administrative Justice at Risk?

Foreword

What are people entitled to expect when public bodies make decisions affecting their daily lives?

What happens when mistakes are made or officials misunderstand the rules or the facts or get things wrong in other ways?

How do we ensure that acceptable complaint, appeal and redress arrangements are in place and command public confidence?

What does this mean in practice in terms of independence, accessibility, fairness and efficiency?

What is happening in an era of austerity and cutback?

How can government save money by improving feedback and learning?

These and similar questions are so fundamental that it is remarkable how rarely they are asked, let alone answered, in any systematic way. It is equally inexplicable why “Administrative Justice” – the system which presents these questions on a daily basis – has such a low profile in political, legal and public debate. In an age where so much emphasis is rightly placed on empowering people, on improving public services and on upholding the Rule of Law, it is astonishing that there is so little focus on the system for ensuring that the State gets it right in its dealings with individuals and families.

The issues matter. The outcomes of decision-making by an extraordinary range of public bodies affect family incomes, jobs, housing and education – even liberty. There has been an explosion of challenges to these decisions in recent years – over a million appeals or complaints are now brought forward every year. To place this in context, there are over three times as many tribunal hearings as there are criminal trials.

Despite the low priority, there have been many changes in recent years – not least through tribunal re-organisation – and numerous hard-working public officials are the unsung heroes who strive to make the system work and ensure a fair deal for the public. However, much remains to be done. Rules can be far too complicated. Too many initial decisions are not right first time. Public sector leaders have yet to learn to treat complaints and appeals as valuable sources of intelligence and learning about what is really happening on the front line. Individuals are finding it harder to get advice and assistance. Fees for appeals are being introduced in some jurisdictions, surely serving as a barrier to justice. Delays have increased. There are few real efforts to put in place structures and procedures – or to explore new and less costly ways of doing things – which are better tuned to the needs of the unrepresented and increasingly unadvised individuals who are the typical users of the administrative justice system.

At a time of increasing economic and social fragility, it is especially important to have meaningful arrangements for the resolution of genuine grievances. Access to justice for aggrieved citizens as users of public services must be a hallmark of any modern civilised society.

With so many distinctive features, administrative justice demands its own identity, and must not be seen or treated as a diluted or obscure corner of the mainstream justice system. People rarely have any choice about which public service or redress system to use. As a voice for users, the statutory role of the AJTC is to oversee the system as a whole, to propose improvements and to highlight the consequences of changes proposed by others.

The future of the AJTC is now in considerable doubt, but for as long as we remain in existence we will strive to provide constructive comment and input. As part of this, we have produced this report to describe a system which we believe to be at risk – and which, if it is to develop satisfactorily, needs the kind of systematic, independent, evidence-based and user-oriented scrutiny that the AJTC has provided to date. If AJTC continues to exist, the report signals the issues we will pursue in an attempt to ensure increased accessibility, fairness and efficiency. If Parliament concludes that we should be abolished, this is part of our legacy. The report identifies the main challenges facing the administrative justice system and outlines the strategic agenda which we believe that others will need to follow and act on to reduce the risks and continue along the path to improvement.

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Executive Summary

1. The administrative justice system has been developed and shaped by legislative and structural reform, especially over the last 10 years. The Administrative Justice and Tribunals Council (AJTC) was established in 2007, replacing the Council on Tribunals, with a statutory role to keep this system under review and provide information and advice to government and others about the current system and ways to make it more accessible, fair and efficient. In this deliberately short report the AJTC takes stock of the current system and the challenges it faces.
2. Administrative justice is regularly under-estimated both in terms of scale – the number of hearings dwarves both criminal and civil justice – and in terms of its life-changing importance – with cases often dealing with matters of life, liberty, health and financial security. Despite this, it has too often been regarded as a ‘Cinderella’ service, overshadowed by more newsworthy criminal justice matters. Even the Ministry of Justice itself barely makes reference to administrative justice in its current Business Plan. This lack of profile in itself contributes to the risks faced by administrative justice, as negative changes may be made ‘under the radar’ of public scrutiny.
3. The AJTC recognises the good progress that has been made in recent years, particularly in reforming tribunal services and in the development of ombudsman and other complaint handling services. However there is a long way to go before the system can be said to adequately meet the needs of individuals and taxpayers. For that reason, this report highlights both current problems and ongoing risks in administrative justice and the need for longer-term reform.
4. The report focuses on five topics:
 - The need for good laws to underpin administrative justice;
 - The need for public service decisions to be made right first time;
 - The need for help, advice and representation in pursuing redress;
 - The management and reform of tribunals across the UK;
 - Wider strategic reform;

It also contains, at Annex A, a case study on the implementation of Employment and Support Allowance to exemplify some of the issues raised.

5. The recent publication of the Law Commission report on Public Services Ombudsmen¹, ongoing consultation on access to the Parliamentary Ombudsman² and the ombudsman-related proposals contained in the *Open Public Services White Paper*³ make it an inopportune time for the AJTC to comment on developments in ombudsman services, but it may do so at a later date.

6. The AJTC recognises that the UK currently faces a period of austerity and that the Government intends to reduce public spending in real terms. With this in mind, it is important that decisions taken in order to achieve cost savings in the area of administrative justice actually achieve this goal, and at the same time avoid unintended and deleterious effects on individual rights and entitlements. For example, planned cuts in legal aid are likely to have a knock-on effect on limiting access to advice and guidance for people pursuing appeals and complaints against public services. Unresolved disputes may in turn generate greater costs both for individuals and families and ultimately for government and the taxpayer.
7. The report challenges the Government and Parliament to recognise the scale of poor decision-making, and therefore unnecessary cost, generated as a consequence of complex and poorly drafted laws in some areas of administrative justice. It also asks the Government to consider more carefully the effect of recurrent poor decision-making in some of its departments. The case study we give shows how the implementation of Employment and Support Allowance has breached every one of the AJTC's Principles for good administrative justice, causing an inevitable and substantial rise in the numbers of appeals and complaints, with the associated costs for all concerned. Lessons must be learned quickly if even greater problems are to be avoided as the government pursues its broader welfare reform agenda.
8. The AJTC is deeply troubled by recent trends which create potential barriers to justice including: the reduction in legal aid; the proposed introduction of fees in some tribunals; the proposed 'democratic filter' for complaints to the Housing Ombudsman; and the lengthening delays in providing hearing dates for appeals in many areas. The report warns the Government of the risks to administrative justice inherent in these trends as well as the attendant risk that it will be seen to act in its own interest where it is itself a party to disputes. The report also questions the constitutionality of HMCTS continuing to be accountable to the Ministry of Justice rather than directly to the judiciary, in respect of administrative justices cases at least.
9. It is axiomatic for the AJTC that everybody in the UK should have appropriate access to administrative justice. The report notes the ongoing work of the AJTC's Scottish and Welsh Committees in furthering reform of tribunal services in those countries, but is also critical of the Government's indecision in signalling its preferred approach to constitutional issues raised in Scotland by the creation of HMCTS.
10. Finally, the report offers outline proposals for further development of administrative justice, focusing on proposals for improving the user experience of administrative justice. There are many forms and styles of administrative justice. The AJTC is keen to see imaginative policy developments that deploy these to good effect, thereby improving service efficiency and effectiveness in a time of financial austerity, while at the same time delivering justice and fairness to individuals.

11. The AJTC believes that this is a critical moment for administrative justice, and for the rights of individuals to challenge government decision-making. It wishes to highlight a widening gap between political rhetoric about public service responsiveness and the all too frequent reality for public service users of decisions and decision-making services that remain inaccurate, impersonal and unresponsive. Good administrative justice is essential to an open 21st century democracy. It is also essential if government is to maintain and develop the trust of individuals and taxpayers in its ability to deliver quality public services. This report is intended to highlight risks that threaten the achievement of these goals.

Summary of Recommendations

Good Laws

For the future, the AJTC recommends that:

- Government should give greater attention to the operational impact of its legislative proposals on departments and other public bodies that have to translate law into decisions affecting individuals;
- Parliament should seek reassurance about any possible additional cost and inconvenience to administrative justice users from legislative change;
- Clarification and simplification of existing legislation should be a priority whenever further changes are proposed.

Right First Time

For the future, the AJTC recommends that:

- Government should seek to ensure that decision-making departments and other public bodies comply with the AJTC's *Principles for Administrative Justice*;
- Government should develop a comprehensive approach to Right First Time to minimise the number of disputed decisions;
- Her Majesty's Courts and Tribunals Service (HMCTS) and decision-making departments should work together systematically to improve the timeliness of decision making and appeals across government;
- Decision-making departments and HMCTS should be open and transparent about service levels and performance, and report them 'end-to-end' from a customer perspective;
- Everybody working in administrative justice should seek to ensure that systematic lessons are learned from experience and publicly reported.

Help, advice and representation in pursuing redress

For the future, the AJTC recommends that:

- the Government should monitor, and commission long-term research into, the actual impact on individuals and families of the reduction in funding of legal aid in administrative justice and the loss of other financial support in the advice, help and representation sector;
- the Ministry of Justice (MoJ) should initiate urgent work with the legal profession and other advisory organisations to find innovative means of sustaining access to advice for administrative justice claimants;
- HMCTS should monitor and report publicly upon the impact of reduced access to advice for claimants on the operational efficiency of tribunals.

Management and reform of tribunals across the UK

For the future, the AJTC recommends that:

- UK governments should ensure that the coherence and consistency of administrative justice is maintained throughout the UK;
- the Judiciary and HMCTS should ensure that the informal nature of most tribunals is not compromised by greater proximity to the criminal and higher courts;
- MoJ and HMCTS should ensure that tribunals administration is properly resourced, and that fair and speedy access to justice is maintained;
- HMCTS should improve the transparency of performance targets, and increase the challenge embedded in them, for the benefit of users;
- the Government should ensure the continued development of non-HMCTS tribunals as independent and impartial bodies, whether or not within HMCTS.

Wider strategic reform

For the future, the AJTC recommends that:

- MoJ, with the support of the Cabinet Office and the Senior President of Tribunals (and the senior judiciary more generally), should lead a programme of work to develop a coherent strategy for administrative justice across the UK;
- MoJ should undertake research into the scope, cost, and benefits of Triage Plus with a view to early piloting;
- HMCTS, in consultation with key stakeholders, should develop a comprehensive approach to adapt dispute resolution services, procedures and methods to take account of the changing pattern of expertise available to claimants.

Introduction

Administrative Justice

12. The Tribunals, Courts and Enforcement Act 2007 defines the administrative justice system as: “the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including—
 - (a) the procedures for making such decisions,
 - (b) the law under which such decisions are made, and
 - (c) the systems for resolving disputes and airing grievances in relation to such decisions”.
13. The goal of administrative justice is to ensure that decisions made by the state accord to individuals and families what is due to them. This applies equally to substance – the benefits and burdens which flow from such decisions (‘distributive justice’) – and process – the way in which the decisions are reached (‘procedural justice’). These decisions affect people in a huge range of contexts, including: welfare, health, education, tax, pensions, visas and even where people are allowed to park their cars.
14. Measuring the success of administrative justice is complex. With regard to the substance of decisions:

“the primary outcomes of administrative procedures are to confer entitlements, impose obligations or regulate activities, and they may ... be judged by the proportion of false negatives and false positives they produce”⁴.

In other words, the system can be judged on the basis of how many decisions are made properly and how many are made wrongly.
15. With regard to process, both the Parliamentary and Health Service Ombudsman⁵ and the AJTC⁶ have published Principles against which public service institutions can judge the efficacy and appropriateness of their interaction with individuals in dealing with decisions, complaints and redress.

AJTC: Principles for Administrative Justice

A good administrative justice system should:

1. make users and their needs central, treating them with fairness and respect at all times;
2. enable people to challenge decisions and seek redress using procedures that are independent, open and appropriate for the matter involved;
3. keep people fully informed and empower them to resolve their problems as quickly and comprehensively as possible;
4. lead to well-reasoned, lawful and timely outcomes;
5. be coherent and consistent;
6. work proportionately and efficiently;
7. adopt the highest standards of behaviour, seek to learn from experience and continuously improve.

16. There is also an important consideration for government in relation to wider social justice – one that is not discussed further here – and that is how to ensure that individuals and families are made aware of their entitlements and obligations in the first place. Government statistics indicate, for example, that the value of *unclaimed* income-related benefits alone is over £16 billion per year⁷.

The Administrative Justice system

17. Administrative justice is a huge, often neglected and little understood area of the overall justice system in the UK. The Tribunals, Courts and Enforcement (TCE) Act 2007 makes clear that original decisions made by public service bodies are the basis of the administrative justice system⁸. These number in the tens of millions every year. Table 1 sets out the number of original decisions in a range of example jurisdictions, together with the number of appeals by individuals, and the success rate of those appeals:

Table 1: Numbers of decisions, appeals and % success in exemplar jurisdictions⁹			
Jurisdiction/Benefit	Decisions Per Year¹⁰	Appeals Per Year	% of Appeals which succeed
Social Security & Child Support ¹¹			
Employment & Support Allowance	648,200 ¹²	197,400	39% ¹³
Disability Living Allowance	470,000 ¹⁴	79,400	38%
Attendance Allowance	380,000	4,200	24%
Income Support	342,000 ¹⁵	15,100	28%
Child Support	120,000 ¹⁶	3,700	42%
Pension Credit	253,000	1,600	23%
Immigration and Asylum			
Immigration (Visas etc.)	2,144,880 ¹⁷	121,000	51% ¹⁸
Asylum	24,485 ¹⁹	15,800	29% ²⁰
Education			
School Admissions (England) ²¹	1,467,295	85,165	30%
Mental Health			
Detentions and Community Treatment Orders	54,100 ²²	26,000	14%
Parking²³			
Parking Tickets (PATAS) ²⁴	4,855,601	56,985	63%
Parking Tickets (TPT) ²⁵	4,245,998	14,269	57%

18. The administrative justice system is concerned not just with formal appeals against decisions (mainly to tribunals) but also with complaints about how those decisions were reached. This includes initial complaints against government departments, subsequent investigations by independent reviewers and examiners, and ultimately, where appropriate, complaints to public services ombudsmen. The number of complaints made against central and local government departments is not centrally collated. However, research carried out by Dunleavy and others²⁶ gives figures for central government department complaints for 2007-08, as set out in Table 2 below.

Table 2: Complaints against large central government departments (2007-8)	
Department	Number of Complaints
HM Revenue and Customs	81,380
Jobcentre Plus	45,790
Child Support Agency	37,600
Independent Police Complaints Commission	28,960
HM Courts Service	26,280
Pensions (now Pensions, Disability and Carers') Service	18,570
UK Passport Service	8,550*
DVLA	4,390

*2006-07 figures

19. Some government departments have external complaints reviewers, examiners or adjudicators to whom people can complain if they are not satisfied with the response provided by the department concerned. These include the Adjudicator's Office (for HMRC, Valuation Office Agency and Insolvency Service), which deals with around 1,200 complaints per annum; the Independent Case Examiner (Child Support Agency and various DWP agencies), which deals with around 4,000 complaints and the Independent Complaints Reviewer Office, which deals with complaints about Land Registry, the Audit Commission and a range of other government bodies. These external review systems settle the great majority of complaints referred to them.

20. Public services ombudsmen deal with complaints once departmental complaints procedures have been exhausted. Table 3 shows the number of complaints received by the public services ombudsmen in the last reported year. It should be noted that only a relatively small proportion of complaints received lead to a full investigation as many are referred back to departments or their external reviewers for handling or are otherwise resolved without investigation:

Table 3: Complaints received by public services ombudsmen (2009/10)

Ombudsman	Complaints Received
Parliamentary and Health Service	23,422 ²⁷
Local Government (England)	21,840 ²⁸
Wales	1,425 ²⁹
Scotland	3,524 ³⁰
Housing	3,870 ³¹
Total	54,081

21. It is difficult, if not impossible, to provide meaningful comparisons between criminal, civil and administrative justice in the UK. This is partly because of the very different subject matters under consideration, partly because of differing processes and partly because of variation across the UK countries. However, a simple comparison of the number of hearings held in each area (Table 4) gives a sense of the sheer scale of administrative justice:

Table 4: Administrative justice compared with civil and criminal justice – hearings

Court/Tribunal	Hearings/Trials in 2010
Administrative Justice	~ 650,000³²
Social Security and Child Support	276,400 ³³
Immigration & Asylum	130,900 ³⁴
Parking (England & Wales)	71,254 ³⁵
School Admissions (England)	60,855 ³⁶
Criminal Justice (England & Wales)	223,000³⁷
Civil Justice (not Family) (England & Wales)	63,000³⁸

22. As elaborated below, it is astonishing that the part of the justice system which most engages individuals is often the most neglected. With honourable exceptions, administrative justice is not treated as a priority by politicians or by civil servants, by judges or by lawyers. This is reflected in many ways – lack of resources, lack of attention and lack of strategy. This ‘Cinderella’ status is even more surprising given the potential life-changing impact of many administrative decisions, the ‘David against Goliath’ nature of most disputes between individuals and government; and the loud and frequent rhetoric from political leaders of all parties about the need to reform the delivery of public services by making them more user or customer driven.

The Administrative Justice and Tribunals Council (AJTC)

23. The AJTC was established in 2007, in succession to the Council on Tribunals. Its statutory role is to keep the whole administrative justice system under review, and consider ways to make the system more accessible, fair and efficient³⁹. The AJTC is the only body which has a UK-wide perspective on administrative justice. Further information about the activities of the AJTC is contained in Annex B. The system of administrative justice was formally recognised and defined in the TCE Act 2007, and has been built upon the foundations laid by the 1957 Franks Report on Administrative Tribunals and Enquiries ('Franks')⁴⁰, the 1961 Wyatt Report⁴¹ on the Redress of Grievances and the subsequent Tribunals and Inquiries Acts of 1958 and 1992, the 2001 Leggatt Review of Tribunals ('Leggatt')⁴² and the 2004 White Paper *Transforming Public Services: Complaints, Redress and Tribunals*⁴³.
24. In October 2010, the government announced its wish to abolish the AJTC under the Public Bodies Bill⁴⁴, currently going through Parliament. Notwithstanding this decision, the AJTC regards the systemic development of the administrative justice system as incomplete. There remain serious shortcomings that need to be overcome, but more than this, there are important principles at stake that may come under threat in a period of austerity. This report accordingly sets out the views of the Council both on where further work is needed and where vigilance will be required if the system is to achieve its potential in delivering a user-friendly, accessible and fair route to redress for individuals while providing an efficient, effective and continuously improving service for taxpayers in general.

The Current Climate

25. Current financial difficulties make this a difficult time for public services and for those they serve. There are cut-backs across the board, and specifically within the justice system. In the last twelve months, the Government has:
- budgeted to cut Ministry of Justice spending by 23% over four years⁴⁵;
 - introduced plans to remove legal aid in almost all areas of administrative justice where life, liberty and home are not directly threatened⁴⁶;
 - introduced direct fees for appellants to immigration and asylum tribunals⁴⁷;
 - proposed to introduce fees for the first time in employment tribunals⁴⁸.

In addition, the Ministry of Justice (MoJ) has been dealing with the logistical challenge of bringing together the Tribunals Service with HM Courts Service, to form the new HM Courts and Tribunals Service (HMCTS)⁴⁹. The creation of this new service has clearly required a great deal of high level attention and will continue to do so.

26. At the same time, reforms in areas such as welfare benefits, health, education and local government will have ongoing consequences on the demand for and delivery of administrative justice in a range of settings. These decisions and reforms are being undertaken against the backdrop of considerable increased demand for tribunals and complaint-handling services in recent years. For example, there were 831,000 cases received by the Tribunals Service in 2010-11⁵⁰. This represents an increase of 5% over 2009-10, but is 31% more than in 2008-09. The impact of these numbers is discussed in more detail below, but it is important to note that the huge aggregate increase masks significant variation between tribunals. For example, while case receipts for employment rose 14% in 2009-10, receipts fell by 8% in 2010-11. In immigration and asylum, case receipts have fallen in both years (by 15% in 2009/10 and 14% in 2010/11). In contrast, social security case receipts have continued to rise in both years, by 40% and 23% respectively.
27. As noted above, data on complaints about government services are much harder to find and collate but, for example, the NHS saw a record rise of 13.4% (to 101,077) in written complaints between 2008-09 and 2009-10⁵¹.

Why is administrative justice 'at risk'?

28. Administrative justice affects more people than any other area of justice, both constitutionally and in their day-to-day lives. It is the one aspect of the justice system with which every individual is likely to come into contact during their life, and it deals with matters that are of critical and often life-changing importance to the individuals concerned. For example, social security tribunals decide about financial benefits on which many unemployed, poor or disabled individuals depend; mental health tribunals decide whether individuals compulsorily detained in hospital must continue to be deprived of their liberty in order to protect themselves or the public and asylum tribunals decide whether it is safe to return people to countries where their lives may be at risk. For many, the decisions taken will determine the possibility of safe, healthy and sustainable family life.
29. For these reasons, delivery of administrative justice necessarily requires the application of significant and focused resources, both in policy development and in operational delivery. This need is increased, not diminished, at a time of financial austerity. Improvement to the current administrative justice system is necessary to achieve better quality processes and outcomes, alongside the desired reduction in the overall cost of delivery.
30. There is no simple blueprint for the institutions that collectively form the administrative justice landscape⁵². They are many, varied and complex and have developed to meet specific concerns in distinct areas of public life. Successive reviews and legislation have sought to create a more independent, coherent and accessible system of administrative justice. As Thompson (2010)⁵³ puts it:

“The theme that underpins the reform of tribunal and administrative justice is system-building ... it is somewhat surprising that it has taken quite so long to progress from an appreciation that tribunals and inquiries, ombudsmen and public bodies’ internal complaints handling systems and courts are all involved in providing redress for people aggrieved with public bodies, to the realisation that the adoption of a holistic approach was logical and desirable”.

31. The ‘holistic’ approach is predicated on a few simple assumptions:

- Public services should strive to get decisions right first time;
- When things go wrong, redress should be readily available;
- The means of redress should be proportionate to the problem caused.

32. In focusing on current and future risks, it is important not to downplay improvements that have already been achieved. As the title of the Senior President of Tribunals’ 2010 report – *Tribunals Transformed* – suggests, significant steps have been taken to achieve Leggatt’s vision of an independent tribunals service to take over management of tribunals from their sponsoring government departments and the establishment of a judicial system comprising a two-tier (First-tier and Upper) tribunal structure under the leadership of the Senior President. At the same time, the Tribunal Procedure Committee has done excellent work in codifying and standardising rules of procedure in the various chambers of the tribunals⁵⁴.

33. Notwithstanding this structural reform within the system to date, the aspiration for a simple, accessible, coherent and proportionate system of administrative justice expressed in the 2004 White Paper has yet to come to fruition. This report sets out the AJTC’s perspective on the challenges and potential pitfalls in achieving a system of administrative justice fit for a 21st century democracy. It is divided into sections covering:

- The need for good, clear and reasonably stable laws and regulations to underpin administrative justice;
- The need for public service decisions to be made right first time;
- The need for help, advice and representation in pursuing redress;
- The management and reform of tribunals across the UK;
- Wider strategic reform;
- A case study on Employment and Support Allowance, at Annex A, which draws together and illustrates many of the issues raised throughout the paper.

Good laws

34. The efficacy of the administrative justice system relies ultimately on clear and unambiguous laws, regulations and rules that are understood by those affected by them – the public. Unfortunately many jurisdictions are a long way from this. Laws and associated policy guidelines are often impenetrable to members of the public and even to professionals versed in their use. In social security, where people most need to understand their rights and responsibilities, the law is set out in 13 large volumes ('the Blue Volumes') including an index of statutory instruments that itself runs to 112 pages⁵⁵.

35. On immigration law, Lord Justice Longmore said recently⁵⁶:

"I am left perplexed ... how any individual ... can discover what the policy ... is at any particular time if it necessitates a trawl through Hansard or formal Home Office correspondence as well as through the comparatively complex Rules themselves. It seems that it is only with expensive legal assistance, funded by the taxpayer, that justice can be done."

This view contrasts starkly with Leggatt's 2001 principle that *"(with few exceptions) tribunal users should be able to prepare and present their cases themselves"*⁵⁷.

36. The AJTC urges Parliament and the devolved legislatures to consider the costs to the public and the individual that result when people seek to uphold their rights where laws are overly complex, ambiguous and/or change rapidly over time. These include – but are not limited to – the costs of obtaining necessary legal advice and representation; the personal and financial costs of challenging decisions in terms of judicial and court time, and delay and inconvenience for the individual. The ultimate cost is to the credibility of the system itself. Much of this could be avoided if the laws underpinning administrative justice were made clear, consistent and accessible.

37. One corollary of the fact that laws are now so complex is that officials themselves often struggle to get decisions right first time. The recent AJTC report *Right First Time*⁵⁸ provides case studies of two organisations where positive action was taken in response to very high appeal success rates and costly appeal processes when their decisions were challenged. The Chief Executive of one of them, the Criminal Injuries Compensation Authority (CICA) commented that:

*"Legislation should be 'designed and drafted with delivery in mind' to avoid confusion for the public and those responsible for implementation"*⁵⁹.

For the future, the AJTC recommends that:

- Government should give greater attention to the operational impact of its legislative proposals on departments and other public bodies that have to translate law into decisions affecting individuals;
- Parliament should seek reassurance about any possible additional cost and inconvenience to administrative justice users from legislative change;
- Clarification and simplification of existing legislation should be a priority whenever further changes are proposed.

‘Right first time’

Quality of Decisions

38. Poorly drafted or rapidly changing legislation is just one factor behind the number of government decisions being successfully challenged. Other factors include:

- Performance targets that tend to prioritise the speed and volume of decisions over their quality and accuracy;
- The reduction of human involvement in decision-making, which is now often computer-based, so that decision-makers lose contact with customers; fail to recognise their individual circumstances and have no involvement with any subsequent complaints or appeals they make;
- The lack of professional confidence in decision-making, so that decisions are inappropriately reliant on particular pieces of evidence, such as medical assessments. The AJTC welcomes the recent assessment of the Employment and Support Allowance (Work Capability Assessment) by Professor Malcolm Harrington, who commented:

“the Jobcentre Plus Decision Makers do not in practice make decisions, but instead they typically ‘rubber stamp’ the advice provided through the Atos [work capability] assessment”⁶⁰

- The decline in presenting officers attending appeal hearings⁶¹, meaning that lessons from successful appeals are not communicated to, or learned from by, decision-makers.

39. The AJTC is concerned that most government departments distance themselves from the consequential costs of poor decision-making. The cost of appeals is borne centrally by the Tribunals Service (now HMCTS) and ultimately is the responsibility of the Ministry of Justice. The AJTC has asked the Government to consider ways of making decision-making departments directly responsible for the cost of appeals that they lose, in order to incentivise better decision-making. The AJTC notes that an arrangement of this kind exists for Employment and Support Allowance appeals over and above an agreed number. In addition, the UK Border Agency will in future pay any application fees refunded to appellants by the Immigration and Asylum Tribunal, subject to certain conditions.

40. Government departments are reluctant to assume responsibility for costs incurred by successful appeals against their decisions. They often cite three reasons for this reluctance:

- Some government decisions leave a significant degree of discretion to the decision-maker. A tribunal may simply take a different view based on the evidence presented;
- Some appeals are won because a mistake or misunderstanding is corrected at the tribunal;
- Some appeals are won because fresh evidence is presented to the tribunal that was previously unavailable to the decision-maker.

41. The AJTC challenges these assumptions. First, where discretion is involved, one would expect convergence between tribunals and decision-makers over time if appropriate feedback is provided. Unfortunately, as Judge Martin, then President of Appeal Tribunals noted in his 2007-08 annual report when reflecting on the previous eight years:

“there is little evidence of significant change [for the better] over time in standards of administrative decision-making”⁶².

Second, appropriate communication between department and appellant should resolve any mistakes or misunderstandings after an appeal is lodged and well before any hearing becomes necessary.

Third, and bearing in mind the months of delay that regularly occur between lodging an appeal and getting a hearing, it should be a matter of concern to the department concerned if an appellant presents ‘fresh evidence’ at the hearing that was in fact available earlier. One explanation for this might be a lack of comprehension as to what is required. More often fresh evidence is not presented by appellants but *elicited from them orally* by skilled tribunal members⁶³. In this case, it should be possible and preferable for skilled decision-makers to elicit such evidence much earlier, without the need for an expensive hearing.

42. The AJTC accepts that there may be circumstances in which it would be inappropriate to charge government departments for successful appeals against their decisions. However, the AJTC would expect these situations to be exceptional and for the most part considers that it is in the public interest for departments to take legal and financial responsibility for their decisions in order to encourage improvement in the quality of those decisions over time.

Timeliness of Decisions

43. It is a well-used maxim that *Justice delayed is justice denied*. Nevertheless, it is one that is particularly apt in the area of administrative justice. People’s personal situations and problems often mean that they need departments to provide swift decisions and, where challenge is necessary, for appeal processes to reach speedy conclusions. Unfortunately, too often people face significant delays.
44. The demand for social security hearings has increased dramatically in recent years, and the Tribunals Service (now HMCTS) has had to significantly increase its productivity to try and cope with that demand⁶⁴. HMCTS statistics show that more than half of all appellants against social security decisions have to wait more than four months after HMCTS receives appeals to the arrangement of a hearing⁶⁵.
45. In reality, as the AJTC report *Time for Action* shows, the delay faced by appellants is far longer even than this, because social security and child support appeals are not sent directly to HMCTS. Instead they must be sent first – within a strict 28-day time limit – to the Department for Work and Pensions (DWP) or (for tax credit appeals) to Her Majesty’s Revenue and Customs (HMRC). The AJTC

notes with real concern that DWP and HMRC currently have no time limit for dealing with those appeals. In the batch of appeals surveyed by AJTC, the average time from receipt of appeals by DWP to hearing was 29 weeks (202 days), and the longest time was 60 weeks (423 days). The AJTC and the Tribunal Procedure Committee continue to engage with the Government on resolving this unacceptable situation.

For the future, the AJTC recommends that:

- Government should seek to ensure that decision-making departments and other public bodies comply with the AJTC's *Principles for Administrative Justice*;
- Government should develop a comprehensive approach to Right First Time to minimise the number of disputed decisions;
- Her Majesty's Courts and Tribunals Service (HMCTS) and decision-making departments should work together systematically to improve the timeliness of decision making and appeals across government;
- Decision-making departments and HMCTS should be open and transparent about service levels and performance, and report them 'end-to-end' from a customer perspective;
- Everybody working in administrative justice should seek to ensure that systematic lessons are learned from experience and publicly reported.

Help, advice and representation to pursue redress

46. Leggatt believed that most tribunal users should be able to represent themselves at tribunal hearings. However, he was also clear that people would need appropriate support and advice in advance of doing so:

“Many users will need additional support if they are to participate fully in their cases. We are much impressed by the way in which users are helped to prepare cases in ways that assist tribunals, and weak cases are weeded out, by much of the expert (often non-lawyer) advice we have seen” (4.15).

In complex matters, or where users are especially vulnerable, they may need representation at the tribunal as well. Help and advice, and representation where needed, usually comes from welfare rights organisations, law centres, charities, Citizens Advice or solicitors. These organisations have been funded in the past mainly by local authorities and through the legal aid budget.

47. The AJTC is concerned that current levels of advice and assistance will not continue as a result of planned reductions to the legal aid budget in England and Wales through the *Legal Aid, Sentencing and Punishment of Offenders Bill*, and parallel reductions in local authority and similar grant-aided funding. In some areas of administrative justice this may remove the chance for people to access any help and advice at all. A tangible example of this is in immigration and asylum where the insolvency, after 35 years, of the Immigration Advisory Service in July 2011, involving the loss of advice from 300 staff in 14 locations, has followed on from the closure of another major immigration and asylum advice provider, Refugee and Migrant Justice, in 2010.

48. The AJTC notes that legal aid provides extremely good value for money. For example, welfare benefits legal aid cost £28.3 million in England and Wales in 2009/10, representing less than 0.18% of the £16 billion value of unclaimed benefits in that year, and the success rate of legally-aided clients in welfare benefit cases is almost 90%⁶⁶. Many advice and legal organisations have warned against cuts to legal aid which may result in people being unable to pursue their justified case without help and advice, including some of the most vulnerable members of society.

49. Even in those areas of law where some legal aid provision will remain (which is only where matters affecting life, liberty, immediate safety or homelessness are at stake), such as legal representation at Mental Health Tribunals, the introduction of fixed fees (the level of which will be reduced by a further 10% in October 2011) has resulted in a lowering of the quality and standards of advice and representation for patients, an issue of major concern to all those involved in the mental health field including the tribunals judiciary.

50. The AJTC is alarmed at five potential and serious consequences of cutting legal aid, which is likely to:

- reduce access to justice, and in doing so diminish people's confidence in the system of justice in the UK. Users who are unable to get help and advice may decide not to pursue perfectly valid cases;
- cause some people's problems to get greater over time, meaning that it will cost more in the long run to support people who would not otherwise have become unemployed, dependent on benefits, bankrupt or homeless;
- lead to many more, and longer, hearings where users are unable to participate properly because they are unsure of what is expected of them;
- increase the number of weak cases that go to tribunal. As Leggatt noted, help and advice often has the dual role of supporting people with valid cases and discouraging those with weak cases;
- give the appearance of government acting in its own cause by making it difficult for people to challenge its decisions.

For the future, the AJTC recommends that:

- the Government should monitor, and commission long-term research into, the actual impact on individuals and families of the reduction in funding of legal aid in administrative justice and the loss of other financial support in the advice, help and representation sector;
- the Ministry of Justice (MoJ) should initiate urgent work with the legal profession and other advisory organisations to find innovative means of sustaining access to advice for administrative justice claimants;
- HMCTS should monitor and report publicly upon the impact of reduced access to advice for claimants on the operational efficiency of tribunals.

The management and reform of tribunals across the UK

Re-structuring

51. In April 2011, the Tribunals Service became part of the wider HM Courts and Tribunals Service. The AJTC was concerned about the way in which this major change took place, in particular with the lack of consultation prior to the decision to re-organise and the lack of focus on any tangible benefits for users of the system. However, the AJTC also has longer-term concerns. Despite the reforms brought about by the TCE Act 2007, administrative justice remains a low priority in comparison with criminal and civil justice in the UK. The AJTC notes, for example, that the Ministry of Justice recent Business Plan 2011-2015⁶⁷ barely alludes to administrative justice at all. This is astonishing given the volume of cases and hearings and the frequent importance of the subject-matter. It is disappointing and almost embarrassing that the status of administrative justice in the UK suffers so much by comparison to approaches to administrative justice in other countries.
52. HMCTS is a large and complex organisation and, given the need to prioritise, AJTC is concerned that its focus and resources will concentrate upon criminal justice at the cost of necessary developments in administrative justice. It is essential that the distinctive nature of tribunal justice is not eroded as financial and organisational imperatives drive a 'one size fits all' approach to hearings. The culture of administrative justice is based on informality, approachability and specialisation. This culture will be significantly undermined if, for example, hearings are held in the often deliberately formal settings of criminal courts. The AJTC advises strongly against holding administrative hearings in such inappropriate settings.
53. The AJTC believes that the administration of tribunals requires further strategic review. The separation of tribunal administration from decision-making departments was a necessary step towards transparency and independence of process. However, the well-intended decision to make the Tribunals Service (now HMCTS) responsible for both the cost and organisation of tribunals has caused a difficult situation.
54. HMCTS has little control over the demand for its service, as that demand is generated by decisions in other government departments. As noted earlier, at present HMCTS has limited ability to transfer the costs⁶⁸ generated by poor decisions to those departments responsible for them. HMCTS therefore has to manage increased demand without being able to address directly one of its root causes – poor original decision-making.
55. To date, a number of approaches have been pursued, including:
- Increased productivity through process improvement, which has led to a 28% increase in disposals per year since 2008-09;

- Discussion with major departments such as DWP with regard to improved communications and processes;
- The downward management of demand through the planned introduction of fees in certain jurisdictions (immigration and asylum, employment).

56. It is hugely to the credit of HMCTS staff and tribunal judges and members that productivity has increased so significantly to cope with increasing demand. However, from a user perspective, it is a matter of real concern that fees are being introduced for the first time since tribunal reform, not least in tribunals where demand is actually falling. Fees create a fundamental barrier to necessary tribunal justice, which has previously been characterised by its accessibility. The AJTC continues to oppose, and to strongly advise government against, their introduction⁶⁹.

57. It is also deeply worrying that the delays in the system have become unacceptably long⁷⁰, especially in areas such as social security where time is of the essence in getting a fair decision about benefits. It cannot be right that so many appellants have to wait 6-12 months to establish their entitlement to fundamental financial support for their families.

58. Recourse to demand management of this kind, raises profound constitutional issues. Administrative justice is concerned primarily with resolving disputes between individuals and central and local government. In effect, government acts in its own cause – which could be seen as self-interest – when it introduces barriers to access to justice for individuals. In other words, restrictions on access to advice, direct tribunal fees and excessive appeal delays all benefit government as “defendant” to the detriment of the individuals and families who are its adversaries in these proceedings.

59. The AJTC is bound to question the constitutionality of HMCTS remaining accountable to the Ministry of Justice rather than directly to the judiciary, at least with regard to administrative justice. It is aware of the different models for support and administration of tribunals and courts across the UK and in particular has noted the different constitutional position of the Scottish Courts Service as a statutory body. There is much to be said for the Scottish approach as a support for the independence of the judiciary and as a guarantor against government acting in its own cause⁷¹.

Maintaining a UK perspective

60. The AJTC is the only organisation that has a UK perspective on administrative justice. We note that, in bringing together HMCS (a body with England and Wales jurisdiction) with the Tribunals Service (a body with England, Wales and Scotland jurisdictions), HMCTS has caused a constitutional lacuna in Scotland that requires urgent attention. The Scottish element of the former Tribunals Service must now operate through ad hoc governance arrangements, a ‘stop gap’ measure that must be considered only temporary in nature. The AJTC Scottish Committee has made recommendations to the Scottish Government with regard to a unified Scottish

Tribunals Service, encompassing both devolved and non-devolved tribunals. The AJTC hopes that early action will be taken to ensure that the framework for a permanent solution can be developed quickly.

61. The announced intention on the part of MoJ to merge tribunal and court judiciaries in England sharpens the necessity for a proper structure to be established. In developing a solution it will be important to bear in mind the need for pan-UK structures, if the system of administrative justice is to have any meaning as a UK concept.
62. The AJTC believes that everyone in the UK should have the same quality of access to administrative justice regardless of the different arrangements that may exist in the devolved nations. The AJTC has played, and continues to play, an active role in tribunal reform in each of the GB countries and maintains strong links with Northern Ireland. As such, it is uniquely placed to gather “cross-border” information and insights and take a UK-wide view. More specifically its Scottish and Welsh Committees play a central role in the unfinished business of tribunal reform and re-structuring in their respective countries. It is especially unfortunate that the abolition of the AJTC seems set to occur in advance of clarity from the UK Government on how it wishes to proceed on matters of major constitutional importance that the AJTC is actively helping to resolve.

Measuring and Monitoring Performance

63. The Tribunals Service was already under immense pressure at the point of re-organisation into HMCTS. Appellants already wait a very long time for a tribunal hearing in the larger jurisdictions and that wait is increasing. It is in the interests of justice that such delays are transparently reported.
64. The Tribunals Service measured its performance as follows:
*“The percentage of single, first instance applications that are dealt with within target time (75% target).”*⁷² This meant that its targets only accounted for a proportion of hearing applications (75%) and so may have presented a distorted picture and hidden significant waits for some appellants. It is important now that HMCTS should establish and publish the maximum and the average waiting times for hearings in order to compare and challenge overall performance over time.
65. The approach to date contrasts unfavourably with the development of targets in the NHS, which now monitor waiting times for patients in Accident & Emergency on average, for 95% of patients, and for longest waiting times. The AJTC would welcome the adoption of a similar approach within administrative justice.

Non-HMCTS Tribunals

66. The problem of non-HMCTS tribunals is primarily an issue for England and Wales. The Scottish Committee of the AJTC addressed the issue in broad outline so far as Scotland was concerned in its paper of January 2011 – *A Vision for the Future*. While progress has been made – a Scottish Tribunals Service has been established and further legislation is planned – it will still take some time for proper consideration to be given to the position of all tribunals in Scotland.
67. So far as England and Wales are concerned most of the significant tribunals that remain outside HMCTS administration are concerned with local government issues⁷³. Following publication of the Public Bodies Bill in October 2010, Valuation Tribunals are likely to be included within HMCTS. This is in line with Leggatt's recommendation that "local government tribunals should be included in the Tribunals System"⁷⁴.
68. However, the AJTC notes that School Admission Appeal Panels and School Exclusion Appeal Panels will continue to remain outside HMCTS management and the two-tier tribunal structure. The AJTC (and CoT before it) has expressed long-standing misgivings about these panels, which were the subject of a special report in 2003⁷⁵.
69. Some progress has been achieved since then through collaboration with the Education Appeals Support Initiative (EASI) and with the Department for Education through the introduction of statutory requirements for panel member training. Nevertheless, concerns remain about the recruitment, operation and independence of these panels, brought about by the locally-based nature of the panels; the absence of procedural rules; and the fact that their operation is subject to Ministerial decisions through statutory Codes of Practice and Secretary of State guidance. The CoT recommended the establishment of a national admission appeals system and the transfer of exclusion appeals to the First-tier Tribunal (Special Educational Needs and Disability).
70. Unfortunately, the increasing number of schools that will be outside Local Authority control (including Academies and Free Schools), and which will therefore act as their own admission authorities, is especially troubling. It is uncertain whether such schools will easily be able to find independent and trained panel members to deal with admission appeals properly, impartially and promptly.
71. The AJTC has raised concerns that the current proposals in the Education Bill to remove the power to reinstate students from School Exclusion Appeal Panels may breach Articles 6 and 13 of the European Convention on Human Rights⁷⁶. The AJTC has recommended that all permanent exclusion appeals should be heard by the First-tier Tribunal (Special Educational Needs and Disability).

For the future, the AJTC recommends that:

- UK governments should ensure that the coherence and consistency of administrative justice is maintained throughout the UK;
- the Judiciary and HMCTS should ensure that the informal nature of most tribunals is not compromised by greater proximity to the criminal and higher courts;
- MoJ and HMCTS should ensure that tribunals administration is properly resourced, and that fair and speedy access to justice is maintained;
- HMCTS should improve the transparency of performance targets, and increase the challenge embedded in them, for the benefit of users;
- the Government should ensure the continued development of non-HMCTS tribunals as independent and impartial bodies, whether or not within HMCTS.

Wider Strategic Reform

72. Wider strategic reform of administrative justice in the UK must begin with the recognition that there is a democratic need for a system: i) to ensure the effective delivery of administrative decisions to individuals by the State; and ii) to resolve disputes and complaints that arise from them. Such disputes have necessarily and materially different characteristics from private disputes in the civil justice system and require a system of administrative justice to deal with them. Both the AJTC and PHSO have published guidance on the principles underlying a successful administrative justice system⁷⁷.
73. The word 'system' implies coherence and consistency. The institutions – courts, tribunals, ombudsmen, independent complaints handlers etc. – within administrative justice must collectively meet the needs of individuals without undue complexity, gaps or overlaps. Where more than one such institution is (or may be) necessarily involved in a dispute, roles and responsibilities between them must be clear and seamless. Disputes of a similar nature should, all else being equal, follow similar and well-signposted paths through the system.
74. The system must offer appropriate means of resolving disputes. Appropriateness requires consideration of the nature of the dispute. Disputes about entitlement may ultimately require adjudication by a tribunal or court to resolve them. Disputes about service quality may require a facilitated explanation or apology, often best handled outside the court and tribunal system. However, it is also essential that complex disputes, which might involve issues of both entitlement and service quality, can be managed within the system without requiring individuals to pursue multiple avenues of redress.
75. The system must be proportionate. In other words, the time, effort and cost of achieving dispute resolution – to individuals, to the State and to taxpayers – must be in proportion both to the scale and the importance of the dispute. Valuable resources should not be expended to settle minor matters where cheaper and acceptable alternatives exist. However, such matters might still warrant expensive judicial attention, for example, where they affect many individuals. Above all, proportionality will require imagination. The avoidance of disputes is infinitely preferable to the resolution of disputes. A phone call to a claimant at the first instance stage to resolve an ambiguity in a claim for benefits may ultimately save a huge amount of time, money and stress by avoiding a later appeal and tribunal hearing that performs the same task.
76. The system must also be accessible to users. Accessibility is not just about modes of access – phone, web, e-mail etc. – or about geographical location and quality of hearing venues, although these are important. It is about meeting users' needs in terms of disability, language, help and advice. It is also about removing barriers to access to justice. For example, the AJTC has spoken out strongly on many occasions against the imposition of fees by the Government on individuals who wish to press their case for entitlement against the government at a tribunal hearing.

77. Perhaps most of all, the system must be designed around the reasonable needs of its users. The implications of this are profound but often misunderstood. They begin with initial claims. Is it sensible to expect often vulnerable claimants to complete 50-60 page applications for benefit without misunderstandings, gaps and ambiguities arising? Is it reasonable to expect claimants to understand the thresholds, determined by statute, regulation, guidance and case law, that decide whether they have an entitlement or not? And is it reasonable to expect that they will be able to do this without significant advice and guidance along the way? Recognition that many claimants of state entitlements are already in some kind of difficulty and therefore need help is an important first step, regardless of whether they ultimately meet the criteria for entitlement.
78. In this context, it is incumbent on all decision-makers to realise that recourse to the appeal process to resolve a dispute is indicative of failure. That failure may be to do with the quality of decision-making, the quality of supporting evidence or the quality of communication. It may simply be a claimant's failure to have realistic expectations about entitlement. But an appeal or complaint means an opportunity has been lost to avoid the consequences of a dispute arising. It is ultimately in nobody's interests for a claimant to have to wait months for an appeal to establish finally whether or not they are, for example, entitled to financial support from the State or to remain in the UK.
79. Where, inevitably, disputes arise and appeals are heard, it is vital that the system communicates the implications of formal adjudications back to original decision-makers, claims form designers, policy makers and legislators. It is an unacceptable waste of taxpayer resources for disputes with similar and avoidable causes to be repeatedly adjudicated by expensive tribunals.

Practical Steps

80. The AJTC has provided specific guidance and recommendations in its *Right First Time* report on potential developments in relation to original decision-making, and its forthcoming report *Proportionate Dispute Resolution* will offer similar guidance and recommendations on ways of avoiding and resolving disputes more efficiently and effectively. The Council has also recently published jurisdiction-specific recommendations for change in its *Time for Action* and *Patients' Experiences of the First-tier Tribunal (Mental Health)*. The following recommendations for early action, in contrast, are intended to have system-wide effect.

Development of a strategy for administrative justice

81. The AJTC's concern about the visibility and priority of administrative justice is noted in the introduction to this report. One consequence of this lack of profile is the absence of a coherent strategy for the development of administrative justice across public service. Such a strategy could systematically address some of the shortcomings in existing arrangements, including:

- Providing greater clarity regarding the governance and accountability of existing institutions in the administrative justice system;

- Ensuring that appropriate administrative justice institutions have full and coherent powers to resolve whole disputes satisfactorily;
- Providing greater consistency of approach between administrative justice institutions (including decision-making departments) with similar roles;
- Minimising situations where individuals are forced to pursue separately appeals against decisions and complaints about how those decisions were taken;
- Providing transparent and comparable management and financial information about dispute resolution institutions and methods to facilitate innovation and greater efficiency and effectiveness;
- Providing clear principles to guide a government-wide approach to issues such as the need for access to help and advice, the appropriateness of introducing fees and the development of future entitlements and appeal rights in administrative justice.

82. In this context, the AJTC also reiterates its support for the Law Commission’s recent proposal ‘that the Government establish a wide-ranging review of the public services ombudsmen’s role as institutions for administrative justice’.

‘Triage Plus’

83. It has become commonplace in administrative justice to differentiate between appeals against government decisions and complaints about such decisions (including the way they have been taken). The former are usually dealt with by internal reconsideration and by tribunals. The latter are dealt with by internal, and sometimes external, complaint-handling bodies with recourse, if necessary, to ombudsmen. The validity of this differentiation has been challenged⁷⁹, not least because people themselves rarely make such a distinction. They usually want problems to be resolved holistically and their sense of being wronged may encompass both the decision itself and the way it was made. Without help and advice people may find it difficult and confusing to distinguish the two, and to know which way to turn to get things put right. As the 2004 White Paper puts it:

“the existing landscape of dispute resolution options is confused and confusing with many variations in name, style and technique”⁸⁰.

84. One possible and innovative solution to this problem was put forward by the Law Commission in 2006, in its *Issues Paper on Proportionate Dispute Resolution in Housing*. Developing an idea from health services, it suggested that so-called ‘triage plus’ providers might be developed – organisations to whom individuals might turn to discuss their (often complex) housing problems and who could then advise on the best route, if any, for them to pursue to achieve a satisfactory resolution. In other words, ‘triage plus’ providers would be able to navigate people through the complexity of the system. As Adler 2008⁸¹ says:

“the great virtue of ‘triage plus’ is that it creates the possibility of informed choice”.

Importantly, Adler notes that ‘triage plus’ might be deployed across a whole range of administrative (and civil) justice disputes.

85. The AJTC believes that this approach has the potential to save time and avoid inconvenience and cost for claimants, for officials and for the justice system. Given the risks inherent in the government decision to significantly reduce legal aid for administrative justice issues, the AJTC strongly recommends that consideration be given to a pilot 'triage plus' service to explore its potential to help users navigate through the administrative justice system.
86. The creation of HMCTS and the probable shift towards more litigants in person discussed earlier in this paper present both challenges and opportunities for courts, tribunals and ombudsmen. For appeals against government decisions, the challenge will be to develop the tribunal model to avoid over-judicialisation and to retain panel chairs with a deep knowledge of the relevant law, so that panels are able to seek relevant information that will help them to arrive at sound decisions regardless of the capacity of self-represented parties. This approach would go some way to address concerns about inequality of arms. A public body – even if not represented at a hearing – will always be a 'repeat player' with far greater resources and expertise at its disposal.
87. The AJTC also considers that there is considerable potential to draw on and develop the ombudsman style of working, with greater emphasis on comprehensive review of the documentary evidence and less reliance on formal hearings. Many users of the administrative justice system find hearings daunting occasions, both in prospect and reality, and would be attracted to settlement by other means. There is a potential role in certain types of case (though not all) for caseworkers acting under delegated authority and appropriate supervision to settle cases without the direct involvement of (relatively expensive) judicially qualified decision makers. This approach could offer greater user satisfaction, procedural and substantive justice, and at lower cost. Further work would be required e.g. to establish whether to offer this approach routinely for particular types of case, or as an option for those preferring greater informality.
88. The central point for future consideration is the need and scope for greater segmentation, choice and flexibility. The AJTC would wish to see a structured programme to consider different ways of delivering administrative justice in the UK, through the use of pilots and other experiments to deploy both existing and new techniques in new settings.
89. These ideas will be explored more fully in the AJTC's forthcoming paper on proportionate dispute resolution (PDR).

For the future, the AJTC recommends that:

- MoJ, with the support of the Cabinet Office and the Senior President of Tribunals (and the senior judiciary more generally), should lead a programme of work to develop a coherent strategy for administrative justice across the UK;
- MoJ should undertake research into the scope, cost, and benefits of Triage Plus with a view to early piloting;
- HMCTS, in consultation with key stakeholders, should develop a comprehensive approach to adapt dispute resolution services, procedures and methods to take account of the changing pattern of expertise available to claimants.

Conclusion

90. Without doubt, administrative justice has improved significantly in the last ten years. The establishment of an independent judicial structure and a coherent approach to tribunals administration has brought significant benefits. However, structural change has been just one element of what is required to deliver a fair, accessible and efficient system. Even then, the concentration of resources into the Tribunals Service (now HMCTS) has brought its own difficulties, both constitutionally and practically.
91. The AJTC is greatly concerned by Government proposals to remove legal aid from many areas of administrative justice. Coupled with the reduction of funding for help and advice services available from local authorities, this will mean that far more people will need to address complex administrative matters on their own. This will surely add to the current burden on administrative tribunals, leading to ever greater delays.
92. Notwithstanding these immediate concerns, the development of administrative justice into a modern, coherent and responsive system will require both a much broader strategic approach and significant cultural reform. That reform should properly start with the laws, rules and regulations underpinning administrative justice. These are often labyrinthine and impenetrable and cannot form a solid foundation for a fair and transparent system of justice. When users cannot understand the rules, reform is needed; when officials appear not to understand them, or not to know which set of rules to apply on a particular date, then that need is urgent.
93. However, any reform based solely on structural change or on 'black letter' law is destined to fall short. Instead, government must address a culture which persists in treating individuals and families as the subjects of government decision-making rather than as citizens and customers. It is quite simply unacceptable that government departments get decisions wrong so often, that they make it so difficult and time-consuming to get decisions corrected and that they fail to learn lessons from repeated disputes. This state of affairs contrasts ever more sharply with the rhetoric of 'public service' and 'customer focus' espoused by successive governments.
94. The AJTC acknowledges that government faces difficult spending decisions. However, there is copious evidence that strategic improvements in the quality, responsiveness and proportionality of administrative justice will lead to significant reductions in government waste and corresponding savings in public spending. It will also lead to a far better experience for individuals and families mired in bureaucratic complexity and delay. 'Right first time' is the right way forward morally, logically and financially, along with a proportionate approach to resolving those disputes that still remain.

Annex A: Employment and Support Allowance – a Case Study

1. Employment and Support Allowance (ESA) is a benefit designed to support financially people who are too ill or disabled to work and then help them back into the workplace where possible. It was introduced to replace Incapacity Benefit (IB) and some related benefits for new claimants in October 2008. Existing claimants of IB began to be transferred across to ESA in April 2011, following piloting in February 2011. There are currently over 2.5 million claimants of ESA or IB in the UK.
2. The AJTC has chosen ESA as a case study because it exemplifies how things can go wrong for people in the administrative justice system. In fact, its implementation to date has breached all of the AJTC's Principles for good administrative justice and acts as a warning for the future that failing to invest in the 'Right First Time' agenda will lead to far greater cost in the long run than any potential 'efficiency' savings in the short term.
3. The AJTC is primarily interested in whole-system problems. For this reason, where possible it considers data from cases that have completed the full cycle of 'claim – original decision – appeal – final ruling'. Because statistics are issued in arrears, the following analysis considers the financial year 2009/10. It should be noted that even this data is qualified by DWP in its July 2011 statistical release on the grounds that some appeals may even now still be in the system⁸².
4. In the year 2009/10, there were 648,200 fresh claims for ESA (Table 5). Of these, 258,200 claimants (40%) were found to be fit for work. 94,500 (37%) of these claimants challenged this decision by appealing. 36,400 (39%) of these appeals were successful⁸³. **In other words, one in seven of the decisions to find a claimant fit for work was found to be wrong on appeal.** Such a system cannot be said to 'lead to well-reasoned, lawful and timely outcomes' (AJTC, fourth principle).
5. A significant element of the ESA process is a Work Capability Assessment (WCA), which scores claimants on a range of functional abilities. Claimants are assigned a score, and require 15 points to establish entitlement to ESA in one of its forms. One might expect that successful appeals against 'fit to work' decisions would centre on those claimants with high point scores, but falling short of the 15 required. In fact, the picture is far less clear, as Table 6 (below) shows. **Even where claimants scored 0 points on the WCA, 34% of appeals were successful.** Such a system cannot be described as 'coherent and consistent' (AJTC, fifth principle).
6. A less visible corollary of the flawed implementation of ESA is the length of time that many claimants have to wait in order to press their right to ESA. Where a claimant is refused the benefit, they have 28 days to appeal. This appeal must be sent to DWP rather than to HMCTS. DWP argues that this provides it with an

opportunity to reconsider its decision before an appeal takes place⁸⁴. Currently, it takes over 8 weeks for an appeal to be transferred from DWP to HMCTS. Once it arrives at HMCTS, it takes (on average) a further 23 weeks before a hearing is held. **In other words, it takes on average over 7 months to overturn an incorrect decision to refuse ESA on appeal**⁸⁵.

7. The AJTC questions whether the requirement for claimants to submit appeals to DWP before they are forwarded on to HMCTS is appropriate and whether the process itself is impartial. Whilst DWP argues that it takes the opportunity to reconsider decisions, the reality appears to be rather different, as Harrington points out:

*“DWP does not specifically record the number of decisions changed at the reconsideration stage; the final decision even after the reconsideration stage is different from the initial Atos advice in only 2.1 per cent of cases, which suggests that the reconsideration process is having very little effect.”*⁸⁶

The AJTC has argued strongly that all appeals should be routed directly from claimants to HMCTS and not to government departments involved in original decisions. This is now the norm elsewhere. Any department-based reconsideration (which the AJTC does not oppose in principle notwithstanding current practical concerns) should take place in parallel with, and not in advance of, the process of making an appeal. The AJTC regards it as unacceptable that DWP fails to record and report upon the outcomes of all reconsiderations. The current system cannot claim to “enable people to seek redress using procedures that are independent, open and appropriate” (AJTC, second principle).

Table 5: ESA Claims and Appeals 2009/10

Date	Total Claims	Fit for Work	Appeals	% Won
Apr-09	52500	21800	9,200	41%
May-09	53100	22000	9,100	41%
Jun-09	56900	22800	9,200	41%
Jul-09	57800	22900	9,300	40%
Aug-09	51600	20500	8,400	39%
Sep-09	55300	22000	8,900	39%
Oct-09	53300	21400	8,200	39%
Nov-09	52300	20800	7,500	39%
Dec-09	44500	17000	5,700	37%
Jan-10	56700	22000	6,800	34%
Feb-10	54500	21500	6,200	34%
Mar-10	59700	23500	6,000	33%
Total	648200	258200	94,500	39%

Table 6: ESA Appeal Success against Points Scored Oct 08 – Feb 10⁸⁷

Points scored	Fit for Work	Appeals heard	Appeals in favour of claimant	% Won
0 points	246,700	85,000	29,000	34%
1 to 6 points	57,000	23,600	11,100	47%
Over 6 points	25,500	11,900	7,600	64%
Unknown	6,800	2,000	400	20%
Total	335,900	122,500	48,000	39%

8. Available evidence indicates that ESA has attracted proportionally far more appeals than any other social security decision. **The annual cost to taxpayers of ESA appeals alone has been estimated by the House of Commons Work and Pensions Committee at £50m per annum⁸⁸.** This cost estimate is based solely on new ESA claims. There is no reason to believe that the rate of appeals will reduce as millions of claimants on IB are reassessed for ESA. Placing this figure in context, the public cost of failure to get it ‘right first time’ for this one benefit is equivalent to almost twice the annual legal aid budget for welfare benefits overall. That budget is about to be cut in its entirety. Such a system cannot be said to ‘work proportionately and efficiently’ (AJTC, sixth principle).
9. Looking behind the facts and figures, there is copious evidence that ESA claimants did not understand the purpose of the WCA, that nobody took the time to explain it, and that it was carried out “mechanistically, impersonally and with a lack of empathy”⁸⁹. Similarly, there is copious evidence that claimants have been expected to attend assessment centres without appropriate facilities for disabled people⁹⁰. Given the purpose of ESA as a benefit, the apparent failure of design and planning is incomprehensible. Such a system cannot be said to ‘make users and their needs central, treating them with fairness and respect at all times’ (AJTC, first principle).
10. The government response to this finding is to “*take forward the recommendations outlined by the Harrington Review to increase the empathy in the system*”. This implies greater consideration for and of user needs that will require additional time and resource. Given the requirement for DWP to make 26% departmental savings as a result of the 2010 Government Spending Review⁹¹, this presents a considerable challenge.
11. ESA claimants and representative bodies have reported consistently that communication has been poor or non-existent. This applies both to the WCA itself, during which many claimants have said that “all they did was look at the computer”⁹², and to the period after a decision on ESA eligibility has been taken. This system cannot be seen ‘to keep people fully informed and empowered to resolve problems as quickly and comprehensively as possible’ (AJTC, third principle).

12. It is clear from the analysis above that the initial implementation of ESA failed to meet 'the highest standards of behaviour' or subsequently 'to learn from experience and continuously improve' (AJTC, seventh principle). More positively, going forward the Harrington Review and the Work and Pensions Committee report provides an opportunity for DWP to apply this principle and seek to learn and improve.
13. The AJTC welcomes reports that claimants have experienced a better service in the two IB-to-ESA reassessment trials in Aberdeen and Burnley, which have been able to interact with the Harrington Review. However, the AJTC would caution that these trials have been shown to be more resource-intensive and some DWP staff have "expressed doubt that the processes used in the trial are workable or sustainable on a national level without additional staff resources"⁹³. Nevertheless the government has committed to national rollout of the 'improved system'. **The AJTC welcomes this rollout and recommends that the rollout is monitored closely to ensure the improvement in the system results in conformity with the *Principles for Administrative Justice*.**

Annex B: The role and work of the AJTC

The Role of the AJTC

1. The primary role of the AJTC is to maintain strategic oversight of the administrative justice system. The AJTC is the successor organisation to the Council on Tribunals (CoT), which operated from 1959 to 2007. CoT was formed⁹⁴ following the Franks Report on Administrative Tribunals and Enquiries, which established the need for greater coherence, procedural uniformity and independent supervision of government tribunals.
2. CoT's powers were substantially updated by the Tribunals and Inquiries Act 1992. The CoT was abolished and the AJTC itself was created by the Tribunals Courts and Enforcement (TCE) Act 2007⁹⁵. This was a response to the Leggatt Review of Tribunals⁹⁶ in 2001 and the subsequent 2004 White Paper *Transforming Public Services: Complaints, Redress and Tribunals*⁹⁷.
3. The White Paper described the continuing growth and complexity of routes to complaint or appeal, most notably tribunals and ombudsmen. It noted the lack of strategic oversight of administrative justice and therefore a lack of coherence as it had developed. The system began to take more shape after the creation of the Tribunals Service in 2006 to administer many of the key tribunal systems, and the First-tier and Upper Tier judicial structure under the leadership of the Senior President of Tribunals, which has evolved since 2007.
4. Leggatt intended that the reformed CoT (i.e. the AJTC) should act as “the hub of the wheel” of administrative justice. The 2007 Act subsequently described administrative justice as:

“the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including –

- (a) the procedures for making such decisions,*
- (b) the law under which such decisions are made, and*
- (c) the systems for resolving disputes and airing grievances in relation to such decisions”⁹⁸.*

This much broader definition of administrative justice encompassed not only original decision-making processes within government departments but also the full range of complaint and redress routes available from internal reconsideration of decisions through to ombudsmen and judicial review.

5. The relationship of the AJTC to the whole administrative justice system is further set out in the Act as a series of general duties:

“(1) The Council is to –

 - (a) keep the administrative justice system under review,*
 - (b) consider ways to make the system accessible, fair and efficient,*

- (c) *advise the Lord Chancellor and Scottish and Welsh ministers on the development of the system,*
- (d) *refer proposals for changes in the system to those persons, and*
- (e) *make proposals for research into the system.*⁹⁹

The Act sets out further specific duties for the AJTC in relation to both tribunals and inquiries¹⁰⁰. In addition, and especially importantly given current developments, the AJTC has a specific oversight role in relation to administrative justice across Great Britain and to the devolved governments in Scotland and Wales¹⁰¹.

6. In essence, the AJTC has followed the CoT in being the ‘conscience’ of the administrative justice system. The interaction of government and individuals in a judicial setting requires a careful balance of independence, accessibility and fairness, but also an appropriate level of informality. It is the protection and development of the special nature of administrative justice that forms the heart of the AJTC’s work.

The Work of the AJTC

7. In practice, the AJTC has pursued its work under five distinct headings:
 - Being a voice for users
 - Taking a systemic overview
 - Providing a UK-wide perspective
 - Offering expert advice on administrative justice.
 - Promoting the strategic development of administrative justice

Being a voice for users

8. Almost everybody will at some point enter into the administrative justice system as almost everybody is subject to government decision-making, whether at national or local level. Many people will receive a timely and acceptable decision and think no more about it. Others will be disgruntled about service or delay but do no more about it or else make an initial complaint but then let the matter drop. Nevertheless, in any given year over one million people will go on to appeal against a government decision and many others will make a complaint to an ombudsman or similar organisation.
9. These one million people will be appealing against a wide variety of decisions relating to, for example: welfare benefits; immigration; school admissions and exclusions; tax and pensions; parking fines and many other often specialised services. Increasingly, their appeals will be managed through Her Majesty’s Courts and Tribunals Service (since April 2011 – formerly the Tribunals Service; see below) and will be heard by judges and other panel members who work in the various Chambers of the First-tier Tribunal.
10. The AJTC is the only organisation that represents the interests of all appellants in the administrative justice system. It carries out this role in a number of ways.

Principles

11. First, it has developed a set of expectations as to how people should be treated in the administrative justice system. The ***Principles for Administrative Justice***¹⁰² set out below, together with associated guidance materials, are designed to provide a benchmark for administrative justice organisations against which to judge their services. The ***Principles*** are designed to complement those produced by the Parliamentary and Health Service Ombudsman (PHSO) to promote good administration¹⁰³.

Member visits

12. Second, AJTC members have statutory access to all tribunal proceedings (including deliberations) even where they are held in private¹⁰⁴. Reports of these visits are discussed by the Council and shared with both the President of the respective tribunal and the tribunal Chair. This has enabled the AJTC to draw attention to a wide range of immediate issues. These might include: shortcomings in the environment (e.g. poor quality venues); problems with communications (e.g. lack of advance paperwork for claimants); or procedural fairness issues (e.g. ensuring that claimants have their say).

13. The programme of AJTC visits also uncovers more systematic problems. For example, some government departments, e.g. the Home Office and the Department for Work and Pensions, have been increasingly reluctant to send officers to present their case at appeal hearings. Regular visits have enabled AJTC members to draw attention to this trend and its detrimental effect on tribunal process, and ultimately fairness¹⁰⁵. Similarly, the length of time that appellants have to wait for a hearing has become increasingly unacceptable in recent years¹⁰⁶. The AJTC is statutorily empowered to notify the Senior President of Tribunals, the Lord Chancellor and Scottish and Welsh ministers where it identifies such systematic concerns¹⁰⁷.

Consultation responses

14. Third, the AJTC regularly responds to government consultations and Parliamentary Committee requests for advice and evidence on matters related to administrative justice. In the last 12 months, it has responded to consultations on proposed changes in a wide range of areas such as legal aid, employment, education, immigration and asylum, mental health and welfare benefits. While organisations exist to consider user issues in many of these jurisdictions, the AJTC is the only organisation with a user-focused remit across all of them.

Stakeholder Group support

15. Fourth, the AJTC plays a key role in bringing together stakeholders in a range of jurisdictions to ensure that operational and practical issues are aired and addressed. In addition to AJTC members attending a variety of user groups and stakeholder meetings and events, the AJTC has provided recent support in three areas in particular: war pensions and armed forces compensation, mental health and education. In regard to War Pensions and Armed Forces Compensation, the AJTC Chairman chairs a stakeholder

steering group and has played a pivotal role in ensuring that the respective tribunals in England & Wales, Scotland and Northern Ireland maintain consistency and uniformity in their operation as government decision-making has been increasingly devolved. The AJTC regards it as vital that devolution does not lead to differential treatment for service personnel (and their families) who might be working side-by-side. The AJTC has also consistently argued for a consistent level of welcome and informality in the treatment of families in this setting.

Taking a systemic overview

16. The breadth of the AJTC's remit is vital. The Leggatt Review recognised a commonality of purpose for individuals challenging state decisions, and that much needed to be done to ensure that the procedures for achieving this are fair and accessible. The AJTC has contributed a significant paper setting out the 'landscape' and putting flesh on the bones of the 'administrative justice system'¹⁰⁸. This paper provides a map of the whole range of administrative justice stakeholders from initial decision-making departments through internal review, complaints handlers, ombudsmen and tribunals and finally the higher courts, where decisions are judicially reviewed.
17. In addition to developing its overarching Principles, the AJTC (and its CoT predecessor) has been involved in setting standards for tribunals¹⁰⁹ and supporting the production of 'model' tribunal rules¹¹⁰. The AJTC has also been active in ensuring that members of tribunals are well qualified and well trained for their roles. This has either been through a supportive role in relation to, for example, the Judicial College (since April 2011 – formerly the Judicial Studies Board) or through pro-active encouragement of legislation as, for example, with the statutory requirement for local authority education appeal panellists to receive regular training¹¹¹. All of this work is designed to ensure that appellants against government and other public body decisions get a fair, accessible and responsive hearing.

Providing a UK-wide perspective

18. The AJTC's remit extends formally to England, Scotland and Wales. It shares this distinction with the Senior President of Tribunals, whose role is also Great Britain-wide. Cordial relationships are also maintained with the devolved administrative justice bodies in Northern Ireland, especially through stakeholder groups. The legal landscape across the UK countries is both varied and complex, most notably due to the historically separate development of law in Scotland. Devolution pre-dated the Leggatt reforms, and so reform programmes have proceeded at a different pace in the different countries. The AJTC's Scottish and Welsh Committees have a significant ongoing role in reform programmes in those countries. In general terms, it is important that oversight of, and expertise in, administrative justice issues in and between the UK countries is maintained if coherent and consistent justice is to be provided to everybody in the UK.

Offering expert advice on administrative justice

19. In addition to the contributions noted above, the AJTC fulfils a number of specific roles on the basis of its expertise in administrative justice.
20. The AJTC provides a standing member of the Tribunal Procedure Committee (TPC)¹¹². This Committee is responsible for developing the rules by which all tribunals within the First-tier and Upper Tier structures operate. This work is highly technical, but it is fundamental to ensuring that tribunals are run accessibly, fairly and consistently.
21. The Lord Chancellor, government ministers and Scottish and Welsh ministers have a statutory duty to consult the AJTC about secondary legislation in regard to listed tribunal procedures and rules where those procedures do not fall under the TPC¹¹³ and about the introduction of fees in tribunals¹¹⁴. More generally, the AJTC is empowered by statute to scrutinise and comment on existing or proposed legislation, where it relates to tribunals in general or to any particular tribunal¹¹⁵.

Promoting the strategic development of administrative justice

Structural Reform

22. Historically, the AJTC and CoT have played significant roles in structural change in administrative justice. This was acknowledged by the Senior President in his first Annual Report:

“The former Council on Tribunals established itself as an important and valued partner in promoting effective tribunal justice, acting among other things as a direct link between the tribunals and their users, and an unrivalled source of information about tribunal activities. The Council also played an active role in overseeing the arrangements for setting up the Tribunals Service and has continued to monitor developments closely as more tribunals are transferred to the new unified system.”¹¹⁶

23. This role continues today in relation to recent developments in England, Scotland and Wales.

The Administrative Justice profession

24. The AJTC takes its role as “the hub of the wheel” extremely seriously. If the Principles for Administrative Justice are to become embedded in daily practice then it is vital to engender a sense of belonging for administrative justice organisations and staff and a sense of the professionalism required in this field. The cornerstones of AJTC work in this area are its annual conference in November and its *Adjust* quarterly periodical.
25. The conference is usually attended by 200+ professionals from administrative justice jurisdictions, and almost always features keynote addresses both from the Senior President of Tribunals and the Minister in charge. Other speakers often highlight best practice

in particular fields or developments in other countries. Above all, the conference is designed as a networking event to support professional contact.

26. *Adjust* is the primary vehicle for written communications. It combines the latest news in the field with learned articles on aspects of administrative justice and opinion pieces on current issues. It also has a strong international flavour, and regularly features material from other countries operating similar systems of administrative justice.

Notes

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- 1 <http://www.justice.gov.uk/lawcommission/publications/ombudsmen.htm>
- 2 <http://www.ombudsman.org.uk/improving-public-service/reports-and-consultations/consultations/direct-access-to-the-parliamentary-ombudsman>
- 3 <http://www.cabinetoffice.gov.uk/resource-library/open-public-services-white-paper>
- 4 Adler, M.: "Understanding and Analysing Administrative Justice" in Adler, M. (ed) 2010: *Administrative Justice in Context*, Oxford: Hart Publishing.
- 5 PHSO (2007): Principles of Good Administration; PHSO (2007): Principles for Remedy; PHSO (2008): Principles of Good Complaint Handling.
- 6 <http://www.justice.gov.uk/ajtc/publications/418.htm>
- 7 Consisting of £9.815 billion unclaimed DWP benefits and £6.4 billion unclaimed HMRC tax credits (middle estimates) – see http://research.dwp.gov.uk/asd/income_analysis/jun_2010/0809_Summary.pdf and <http://www.hmrc.gov.uk/stats/personal-tax-credits/cwtc-take-up2007-08.pdf> (latest available figures)
- 8 TCE Act 2007, Schedule 7, 13(4).
- 9 Table 1 is based on official statistics but the numbers are intended to be illustrative rather than precise as decisions and appeals cannot be matched across reporting years.
- 10 Based on the most recent complete reporting year available.
- 11 Annual Tribunal Statistics 2010-11, Table 3.2., available at: <http://www.justice.gov.uk/downloads/publications/statistics-and-data/tribs-stats/annual-tribunals-statistics-2010-11.pdf>
- 12 Source: http://statistics.dwp.gov.uk/asd/workingage/esa_wca/esa_wca_26072011_tables.xls
- 13 Op. cit.
- 14 DLA and AA figures received on direct request to DWP Statistics department. Best published source is: <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100322/text/100322w0009.htm>
- 15 http://statistics.dwp.gov.uk/asd/asd1/stats_summary/stats_summary_may11.pdf
- 16 Source: <http://www.csa.gov.uk/en/about/facts-and-figures.asp>
- 17 2010 Entry Clearance Visas. Source: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/control-immigration-q1-2011-main?view=Binary?type=Finjan-Download&slot=00000334&id=00000333&location=0A644212>
- 18 Based on Annual Tribunal Statistics 2010-11 (op. cit.), Table 4.2. Figures for withdrawn cases are excluded as published statistics do not specify whether UKBA or the claimant has withdrawn from the case.
- 19 Source: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/hosb1510/hosb1510?view=Binary> (2009 figure, excluding dependants)

Notes

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- 20 Based on Annual Tribunal Statistics 2010-11 (op. cit.), Table 4.2. Figures for withdrawn cases are excluded as published statistics do not specify whether UKBA or the claimant has withdrawn from the case.
- 21 Source: SFR 11/2011, <http://www.education.gov.uk/rsgateway/DB/SFR/s001008/sfr11-2011.pdf>
- 22 Source: <http://www.ic.nhs.uk/statistics-and-data-collections/mental-health/mental-health-act/in-patients-formally-detained-in-hospitals-under-the-mental-health-act-1983-and-patients-subject-to-supervised-community-treatment-annual-figures-england-2009-10>
- 23 PATAS provides an appeal service to decisions by the London boroughs. TPT provides an appeal service to decisions made by other councils in England and Wales where parking offences are no longer dealt with in magistrates' courts.
- 24 PATAS, Annual Report 2009/10 available at <http://www.patas.gov.uk/annualreports.htm>
- 25 TPT Statistical Digest 2009/10 available at http://www.trafficpenaltytribunal.gov.uk/downloads/TPT_STATS_09_10.pdf.
- 26 See Dunleavy et al: "Joining up citizen redress in UK central government" in Adler, M. (ed) 2010: *Administrative Justice in Context*, Oxford: Hart Publishing.
- 27 Source: PHSO, Annual Report 2010-11, Figure 1, p39
- 28 Source: LGO, Annual Report 2010-11, available at: <http://www.lgo.org.uk/GetAsset.aspx?id=fAAxADQAMAA0AHwAfABUAHIAAdQBIAHwAfAAwAHwAO>
- 29 Source: PSOW, Annual Report 2010-11, p10.
- 30 Source: <http://www.spsso.org.uk/files/webfm/Stats/2009-10%20Stats/Cases%20determined%20in%202009-10%20by%20sector,%20stage%20and%20outcome.pdf>
- 31 Source: http://www.housing-ombudsman.org.uk/downloads/HOS_AR_09.pdf, p66.
- 32 This figure is an estimate based on the number of receipts in various tribunal jurisdictions where the number of hearings is not separately reported, e.g. Mental Health, which has around 25,000 receipts per annum.
- 33 Source: Annual Tribunal Statistics 2010-11 (op. cit.)
- 34 Op. cit., Table 4.2. Sum of allowed and dismissed appeals, including paper hearings.
- 35 This is a combined figure for hearings heard by the Traffic Penalty Tribunal Service (TPT) and the Parking and Traffic Adjudicators Service (PATAS). Sources: PATAS Annual Report 2009/10 available at <http://www.patas.gov.uk/annualreports.htm> and TPT Statistical Digest 2009/10 available at http://www.trafficpenaltytribunal.gov.uk/downloads/TPT_STATS_09_10.pdf
- 36 Source: Department for Education, Statistical First Release, SFR 11/2011, op. cit.
- 37 Source: Judicial and Court Statistics 2010, available at: <http://www.justice.gov.uk/downloads/publications/statistics-and-data/courts-and-sentencing/judicial-court-stats.pdf>. Includes 180,000 magistrates' hearings and 43,000 crown court trials.
- 38 Op. cit. Figures are not provided for family court hearings.
- 39 See Annex A for a more detailed account of the work of the AJTC

Notes

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- 40 Cmd 218, 1957.
- 41 JUSTICE (1961): *The Citizen and the Administration: the Redress of Grievances*. ('The Wyatt Report')
- 42 Leggatt, A. (2001). "Tribunals for Users - One System, One Service". Department for Constitutional Affairs.
- 43 Department of Constitutional Affairs (2004). Cm 6243, available at: <http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/pubs/adminjust/transformfull.pdf>
- 44 <http://services.parliament.uk/bills/2010-11/publicbodieshl.html>
- 45 http://cdn.hm-treasury.gov.uk/sr2010_summary.pdf, p10, Table 1.
- 46 <http://www.justice.gov.uk/consultations/legal-aid-reform.htm>
- 47 <http://www.justice.gov.uk/consultations/consultations-CP10-10.htm>
- 48 <http://www.bis.gov.uk/Consultations/resolving-workplace-disputes?cat=closedawaitingresponse>
- 49 <http://www.justice.gov.uk/about/hmcts/>
- 50 <http://www.justice.gov.uk/downloads/publications/statistics-and-data/tribs-stats/annual-tribunals-statistics-2010-11.pdf>
- 51 NHS Information Centre (2010): *Data on Written Complaints in the NHS 2009-10*, available at www.ic.nhs.uk.
- 52 For a fuller description of this landscape, see AJTC (2009): *The developing administrative justice landscape* at <http://www.justice.gov.uk/ajtc/publications/447.htm>
- 53 Thompson, B.: "Current Developments in the UK: System Building – from Tribunals to Administrative Justice" in Adler, M. (ed) 2010: *Administrative Justice in Context*, Oxford: Hart Publishing.
- 54 See Senior President of Tribunals' Annual Reports 2010 and 2011 for more.
- 55 See <http://www.dwp.gov.uk/docs/c-0031.pdf>
- 56 AA (Nigeria) v Secretary of State for the Home Department [2010] EWCA Civ 773 at 87.
- 57 Leggatt, op.cit. p215.
- 58 AJTC (2011) *Right First Time*, available at: [www.justice.gov.uk/ajtc/docs/AJTC_Right_First_Time_web\(7\).pdf](http://www.justice.gov.uk/ajtc/docs/AJTC_Right_First_Time_web(7).pdf)
- 59 Op.cit., paragraph 63.

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- 60 Harrington M. *Independent Review of the Work Capability Assessment*, 23.11.2010, p10.
- 61 See AJTC (2011): *Right First Time*, op. cit. at para 36.
- 62 http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/social-security-and-child-support/publications/SSCSA_PresRep07_08FINAL.pdf, Foreword.
- 63 Supported by evidence given to the Work and Pensions Select Committee by HHJ Martin in 2009, <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmworpen/memo/decision/ucm2702.htm>
- 64 See <http://www.justice.gov.uk/downloads/publications/corporate-reports/hmcts/tribunal-service-annual-report-10-11.pdf> at pp 7-9.
- 65 See Table 5.1 in Tribunal Statistics 2010-11, available at: <http://www.justice.gov.uk/downloads/publications/statistics-and-data/tribs-stats/annual-tribunals-statistics-2010-11.pdf>
- 66 Legal Services Commission, http://www.legalservices.gov.uk/docs/archive/StatsPack_2008-09.pdf
- 67 <http://www.justice.gov.uk/publications/corporate-reports/moj/ministry-of-justice-business-plan-2011-15/index.htm>
- 68 It is understood that some costs are transferred in relation to new benefits such as Employment and Support Allowance, and that future fee refunds in Immigration cases will be paid by UKBA.
- 69 See, for example, <http://www.justice.gov.uk/ajtc/news/443.htm>
- 70 See Table 5.1 in Tribunal Statistics 2010-11, available at: <http://www.justice.gov.uk/downloads/publications/statistics-and-data/tribs-stats/annual-tribunals-statistics-2010-11.pdf>
- 71 See <http://www.scotcourts.gov.uk/courtsadmin/governance.asp>
- 72 Tribunals Service Annual Report 2009-10, p14.
- 73 Noting that the Residential Property Tribunals Service will join HMCTS during 2011/12.
- 74 Op. cit, para 3.15.
- 75 Available at: <http://www.council-on-tribunals.gov.uk/publications/502.htm>
- 76 See http://www.justice.gov.uk/ajtc/docs/Michael_Gove_March_2011.pdf
- 77 See n5 and n6 above.
- 78 Law Commission, Law Com No 329., Recommendation 1 at p17.
- 79 Dunleavy et al, op. cit; National Audit Office (2005): *Citizen Redress: What citizens can do if things go wrong with public services*. HC-21 (London, The Stationery Office).

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- 80 Op. cit., para 2.8
- 81 Adler, M. (2008): "The idea of proportionality in dispute resolution", *Journal of Social Welfare and Family Law*, Vol 30, No. 4, December 2008, 309-321.
- 82 Source: http://statistics.dwp.gov.uk/asd/workingage/esa_wca/esa_wca_26072011.pdf, Table 3 notes.
- 83 In fact, the successful appeal rate is more likely to be 40-41% once all appeals have been heard, based on Table 3 notes as above.
- 84 See AJTC (2011): *Time for Action*, p5. Available at: http://www.justice.gov.uk/ajtc/docs/Time_Limits_final.pdf
- 85 Source: Hansard, HC Deb, 21 June 2011, c185W. It is equally disturbing that a similar aggregate delay occurs in overturning incorrect decisions to refuse Disability Living Allowance.
- 86 Harrington, op. cit., Chapter 6, paragraph 17.
- 87 Source: Hansard, HC Deb, 28 June 2011, c661W.
- 88 Source: House of Commons Work and Pensions Committee, Sixth Report of Session 2010-2012 *The role of incapacity reassessment in helping claimants into employment*, HC1015, published 26th July 2011, at paragraph 24.
- 89 Harrington, op. cit., Chapter 4, paragraph 2.
- 90 Source: Work and Pensions Committee, op. cit., paragraphs 67-71.
- 91 Source: http://cdn.hm-treasury.gov.uk/sr2010_complereport.pdf at paragraph 2.123
- 92 Source: Work and Pensions Committee, op. cit., at Ev 9.
- 93 DWP, Research Report 741, p25, available at: <http://research.dwp.gov.uk/asd/asd5/rports2011-2012/rrep741.pdf>
- 94 Tribunals and Inquiries Act 1958; Tribunals and Inquiries Act 1992.
- 95 <http://www.legislation.gov.uk/ukpga/2007/15/contents>
- 96 Leggatt, A. (2001). "Tribunals for Users - One System, One Service". Department for Constitutional Affairs.
- 97 Department of Constitutional Affairs (2004). Cm 6243, available at: <http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/pubs/adminjust/transformfull.pdf>.
- 98 TCE Act 2007, Schedule 7, 13(4).
- 99 TCE Act 2007, Schedule 7, 13(1).

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- 100 TCE Act 2007, Schedule 7, 14-15.
- 101 TCE Act 2007, Schedule 7, 4-8.
- 102 Available at <http://www.justice.gov.uk/ajtc/publications/418.htm>
- 103 <http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples>
- 104 TCE Act 2007, Schedule 7, 22.
- 105 See, for example, AJTC (forthcoming): *Right First Time*.
- 106 See AJTC (2011): *Time for Action* at: http://www.justice.gov.uk/ajtc/docs/Time_Limits_final.pdf
- 107 TCE Act 2007, 13(3).
- 108 AJTC (2009): *The Developing Administrative Justice Landscape* at <http://www.justice.gov.uk/ajtc/publications/447.htm>
- 109 CoT (2002): *Framework of Standards for Tribunals* available at: <http://webarchive.nationalarchives.gov.uk/20090608183147/http://www.council-on-tribunals.gov.uk/publications/framework.htm>
- 110 CoT (2003): *Guide to Drafting Tribunal Rules*, <http://webarchive.nationalarchives.gov.uk/20090608183147/http://www.council-on-tribunals.gov.uk/publications/153.htm>
- 111 The Education (Admission Appeals Arrangements) (England) (Amendment) Regulations 2007 (SI 2007/3206)
- 112 <http://www.justice.gov.uk/about/moj/advisory-groups/tribunal-procedure-committee.htm>
- 113 TCE Act 2007, Schedule 7, 24.
- 114 TCE Act 2007, s42(5).
- 115 TCE Act, Schedule 7, 14(2)
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