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Dear Paul,

Transforming Tribunals Consultation Paper

I am enclosing the response of the Administrative Justice and Tribunals Council to the consultation questions in Transforming Tribunals: Implementing Part 1 of the Tribunals, Courts and Enforcement Act 2007.

The Council has some general observations on the consultation paper, some of which are developed further in answer to specific questions. These comments are to be read against the background of the good progress already made by the Tribunals Service in progressing the operational change agenda and the evident commitment to maintaining the momentum, both of which are very well reflected in the paper.

It is understandable that the consultation, like the Act itself, should have a structural focus with an attention to matters of detail. However, the paper sometimes seems to lose sight of the fact that structural change, rationalisation and standardisation are not ends in themselves but are part of a wider reform with the needs of users at its heart. There is little about the impact of the proposed changes on users and the extent to which appellants and their representatives will continue to need information and advice that is specific to particular jurisdictions. It is disappointing that the Enhanced Advice Project outlined in the 2004 White Paper appears to have been abandoned and that the paper gives no clear indication of how the need for advice will be met.

As the reform project enters its implementation stage, there is a need for regular and timely communication with appellants, their representatives and others about the practical implications of the proposed changes. Among other things, this would serve to provide reassurance, and demonstrate clearly, that the role and expertise of individual jurisdictions will be safeguarded.

The paper has little new to say about the broader administrative justice landscape and proportionate dispute resolution. While there is reference to early dispute resolution projects that have been under way for some time, there is no real sense of strategic direction in taking forward the wider vision of the 2004 White Paper.

In the Council's view, this indicates a need for a dedicated policy team within the MoJ but outside the Tribunals Service to look at administrative justice issues in a more holistic way. If this is what is contemplated following the recent announcement of management restructuring within the MoJ, it would be a welcome development. A dedicated policy unit of this kind should be able to accommodate a systemic approach linking access and justice so that the wider vision in the 2004 White Paper of improved knowledge and awareness of rights, with support into and through the institutions of administrative justice, is realised. This raises considerations going beyond the scope of the present consultation, including constitutional issues, and the Council intends to comment further on them in due course. The Council looks forward to engagement in dialogue with those with the lead responsibility for this important area of policy.

So far as the present consultation is concerned, a subject of special interest to the Council is the proposed mapping of existing tribunal non-legal members into the new roles in a way which maximises the opportunity for their flexible use in appeals (para.230). The Council believes that it will have a useful contribution to make to this exercise and would appreciate an assurance that it will be consulted on it.

The Council was pleased to see the attention paid in the paper to research in the administrative justice field, most of it funded independently of the Ministry of Justice and its predecessors. The Council is looking forward to exercising its new statutory function of making proposals for research into the administrative justice system. An empirical base is essential in order for the Council and government to consider where improvements can be made.

Kind regards,

Ray Burningham
Chief Executive