

Administrative Justice & Tribunals Council

ANNUAL REPORT 2009/2010

This Report is made to the Lord Chancellor,
the Scottish Ministers and the Welsh Ministers

Presented to Parliament pursuant to Schedule 7,
paragraph 21 of the Tribunals, Courts and Enforcement Act 2007

Presented to the Scottish Parliament by the Scottish Ministers in accordance with
Schedule 7, paragraph 21 of the Tribunals, Courts and Enforcement Act 2007

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Schedule 7, paragraph 21 of the Tribunals, Courts and Enforcement Act 2007

The AJTC's Scottish and Welsh Committees publish their own annual
reports which are laid before the Scottish Parliament and the National Assembly for
Wales by the Scottish and Welsh Ministers respectively.

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Chairman's Foreword

I am pleased to present the AJTC's Annual Report for 2009-10, the first since my appointment as its Chairman in September 2009. In the months immediately following my appointment, I invited the AJTC members and senior secretariat to undertake a fundamental review of our operations. The outcome of the review was a new strategy to be more proactive in priority areas as we set about fulfilling our very broad statutory duties. This has enabled us to take forward a number of special projects this year, the details of which are discussed in this report. In our Strategic Plan for 2010-13 we also stated our intention henceforth to undertake 5 special work projects every year.

However, as the text of this foreword was being finalised we learned that the AJTC is to be included among the MoJ sponsored Arms Length Bodies to be abolished through the Public Bodies Reform Bill, due to be introduced in Parliament in the autumn. Whilst recognising the absolute prerogative of Ministers and Parliament to take such a decision, the outcome is disappointing and it is unfortunate that we were not included in the discussions leading to this decision. However we look forward to contributing to the debate about how our functions are to be discharged in the future. The AJTC and the former Council on Tribunals have been valued for playing a leading role in the development of tribunals and administrative justice for over 50 years. Even if the life of the AJTC itself is to be cut short, we firmly believe that our functions of monitoring, influencing and improving the administrative justice system as a whole, particularly from the perspective of the users, will continue to be vital. This is especially so at a time when simultaneously we see a wish to reinforce the power of the citizen against the state, massive pressures upon public services and a mushrooming in the volumes of complaints and appeals.

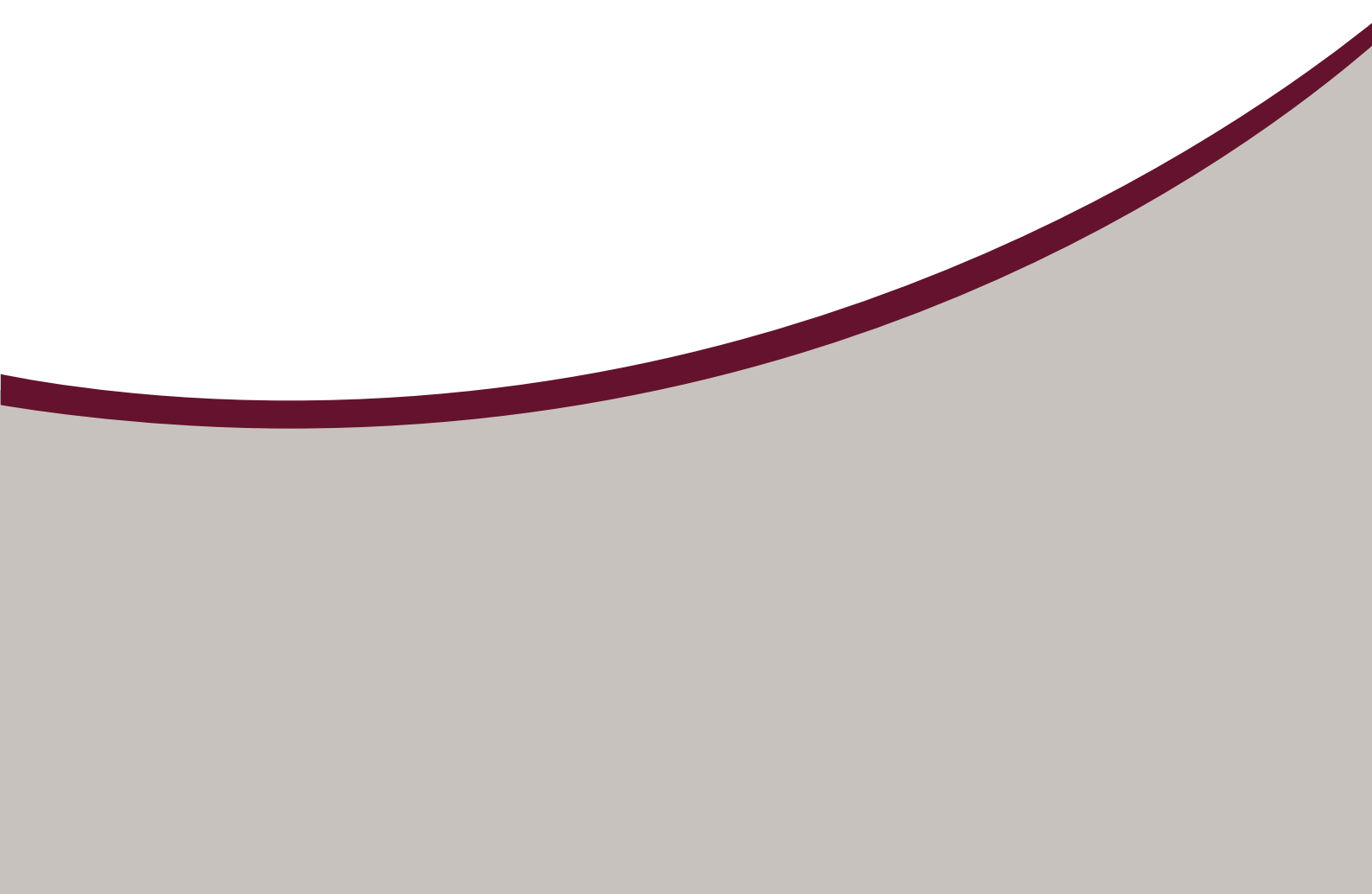
The administrative justice system is not well understood and, historically, has not been given a high priority, either within the Ministry of Justice or across government as a whole. Notwithstanding the establishment of the Tribunals Service, whose own operations continue to benefit from our oversight, there are still many important tribunal systems operating outside the unified system, and likely to remain so for the foreseeable future.

The AJTC was also established to take a unique perspective of how the various components of the administrative justice system – i.e. decision makers, tribunals, ombudsmen, complaint handlers and the courts – fit together. It will be a great pity if this wider perspective were to be lost completely.

I also hope that one or more other bodies, whether inside or outside the public sector, will be able to take on the AJTC's role as the "voice of the user". The recently announced Courts and Tribunals Integration Programme provides a pertinent example of where the AJTC's influence has encouraged policy makers in the MoJ to give proper consideration to the particular needs of tribunal users in taking this work forward. Who will do this in the future?

In the meantime, we will of course continue to carry out our statutory duties and intend to complete the special projects that are already in train. Moreover, we plan to leave strong legacy messages, drawing upon the contributions of the former Council on Tribunals and AJTC, with clear principles and signposts for those charged with promoting the continuous improvement of the administrative justice system.

Richard Thomas CBE



Our Purpose, Vision and Values

OUR STATUTORY ROLE

The key functions of the AJTC as set out in the Tribunals, Courts and Enforcement Act 2007 are:

- keeping the overall administrative justice system and most tribunals and statutory inquiries under review;
- advising ministers on the development of the administrative justice system;
- putting forward proposals for changes;
- making proposals for research.

The Act also makes provision for the Scottish and Welsh Committees of the AJTC to carry out functions conferred under any statutory provision. The AJTC has established a protocol to guide the interrelationship between the AJTC and its Scottish and Welsh Committees.

OUR PURPOSE


Individual decisions by government and other public bodies impact on the daily lives of every citizen. Over half a million disputes reach a tribunal or ombudsman every year.

The AJTC was created to be the independent and authoritative voice to monitor and improve the way public bodies make decisions affecting individuals and the workings of redress mechanisms, including tribunals. We are uniquely placed to consider the administrative justice system as a whole – from the initial decision affecting the citizen to the final outcome of any complaint or appeal.

Our purpose therefore is to help make administrative justice increasingly accessible, fair and efficient by:

- playing a pivotal role in the development of coherent principles and good practice;
- promoting understanding, learning and continuous improvement;
- ensuring that the needs of users are central.

Our work will be driven by the needs of users, with a particular focus on maximising access and customer satisfaction and minimising cost, delay and complexity.



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1. Introduction and highlights of the year

CHANGE OF CHAIRMAN

1. 2009 saw Richard Thomas, the former Information Commissioner, succeed Lord Newton of Braintree, as our Chairman. Lord Newton of Braintree was the longest serving Chair of the former CoT and the AJTC, having served from September 1999 to July 2009, a period of almost 10 years. Lord Newton led the respective Councils through one of the most significant periods in the history of tribunals and made a major contribution to the tribunals reform programme. Many of the key players in the tribunals world paid tribute to his significant contribution at a gathering in the Royal Courts of Justice to mark his departure.
2. In his first 6 months Richard Thomas has overseen a fundamental review of the AJTC's working methods and priorities, and developed a new strategic direction for the organisation.

NEW CHAIRMAN'S REVIEW OF THE AJTC'S WORKING METHODS AND PRIORITIES

3. Our new Chairman initiated a review of our working methods and priorities. The combination of a wide statutory remit and limited available resources means that as an organisation we need to "be selective to be effective". To use our resources to best effect we now select work applying the following criteria:
 - **Work must be important from the user's perspective** – proposed work should engage issues which are central to, or of particular seriousness for, administrative justice or tribunals, and particularly important for private individuals in their encounters with the administrative justice system or tribunals;
 - **Our contribution will be distinctive and authoritative** – there should be a real need for a user perspective in the proposed area of work, and scope for the AJTC to make a worthwhile contribution which would otherwise be unlikely to surface; and
 - **There should be a reasonable prospect that our work will make an impact** – we should be confident that our contribution will be taken seriously and will make a difference. The proposed work should also relate to relevant agenda reforms.
4. We have adopted these criteria in setting out priority areas and projects in our Strategic Plan and Action Plan.
5. We also need to be able to measure our work in order to assess what impact we have made. To that end we have developed some initial Key Performance Indicators against which to measure our effectiveness. These KPIs, to be further elaborated in 2011 in light of experience, are:

- delivering at least five reports or other proactive outputs each year which identify potential improvements within the administrative justice system;
- increasing our profile; one of the ways we will do this is to increase annual website hits by 25% by 2012; and
- recasting our Annual Report as an “Impact Statement” documenting our overall contribution and achievements.

PUBLICATION OF OUR STRATEGIC PLAN AND ACTION PLAN

6. In February 2010 we published our Strategic Plan 2010-13, outlining our approach to promoting improvements in the administrative justice system over the coming three years. This follows up our first AJTC Work Programme, published in 2008, which meets the obligation under the Tribunals, Courts and Enforcement Act 2007 ‘to formulate a programme of work and send a copy to the Lord Chancellor and Scottish and Welsh Ministers’.
7. Our aim is to make a tangible difference for users and the Strategic Plan sets out our new approach. We seek improvements for the benefit of users of the administrative justice system through our own projects and through advising and encouraging other public bodies and stakeholders. We have divided our work into three main headline areas in order to achieve a broad division of effort and resource:
 - Carrying out projects to identify improvements – 40%
 - Working with others to achieve change – 40%
 - Exploiting opportunities for our voice to be heard – 20%
8. As part of our new, selective approach, we identified a number of policy areas within which we plan to initiate special projects over the next three years. We aim to complete five projects over the 2010-11 reporting period, described in our Action Plan 2010-11, which also sets out how we plan to take forward the objectives of our wider Strategic Plan over the 2010-11 reporting period.

NEW WORKING AND MEETING ARRANGEMENTS

9. Our Strategic Plan describes our new approach to working under our three main headline areas – carrying out projects to identify improvements; working with others to effect change; and exploiting opportunities for our voice to be heard on behalf of users. This approach harnesses the varied skills set of the Council and its staff who work together on specific projects and other activities.
10. The Council now meets every other month rather than monthly. Days in the alternate months that were reserved for Council meetings are now treated as Working Days to enable members to meet to focus on project work.

11. The Council has retained its two Standing Policy Committees – Economic and Regulatory and Social Affairs. These Committees are chaired by Council members and supported by the secretariat staff. The Committees keep developments in their respective sectors under review and decide, in line with our selection criteria, whether and how the Council should respond to external requests. They also oversee and approve responses to external consultation requests, which are prepared by the Secretariat.
12. We continue to exercise our statutory right to observe Tribunal hearings. However, visits to tribunal hearings and other networking activity are now, where possible, linked to one of our projects and are an important means of gathering facts, opinions and assessments to inform and illuminate the work of that project.

PRINCIPLES CONSULTATION

13. The Council on Tribunals had a proven track record for giving authoritative guidance on the establishment and running of tribunals. After the implementation of the Tribunals, Courts and Enforcement Act 2007, the remit of the Council was extended to cover the whole of the administrative justice system and its name changed to the AJTC to reflect this. In early 2009, it was decided that the AJTC should develop a set of principles for administrative justice. In keeping with the statutory remit of the new organisation, the intention is to create an authoritative statement about how the system as a whole should behave and how it should treat the people who use it.
14. During the first half of 2009-10, detailed research was undertaken to investigate the development of principles within administrative justice, both in the UK and globally. The purpose of this work was to learn from and build upon the knowledge and experience that had already built up in the last 30-40 years. This research is due to be published in late 2010 under the title of *Developing Principles of Administrative Justice*.
15. In parallel with this, a task group of Council members led by Dr Jonathan Spencer was established to develop a set of principles for administrative justice to inform our engagement with stakeholders to bring about change and reform within the system. In September 2009, a first draft of the principles was presented to an Advisory Group of experts drawn from government, judiciary and academia. The principles were generally well received but it was agreed that they required more work to emphasise the user perspective and to provide overall direction for the system as a whole.
16. The draft principles were revised during the latter half of 2009-10 and after a further round of consultation with the Advisory Group, they were issued for formal consultation in March as *Principles for Administrative Justice and the AJTC's approach*. At the time of writing, sixty five replies to the *Principles* consultation document have been received and the response has been overwhelmingly positive. Further work is taking place over the summer to address specific comments and concerns with a view to launching the final *Principles* document and companion texts during Autumn 2010.

AJTC CONFERENCE

17. Our 2009 Conference was the first to be held under the chairmanship of Richard Thomas and was attended by around 200 delegates from the tribunals, regulatory, complaints handling and academic sectors. The conference provided our new Chairman with a valuable opportunity to meet with a wide range of representatives from the administrative justice world and to set out his vision of the future direction of the AJTC.
18. The morning session's speakers included Lord Justice Carnwath, Senior President of Tribunals, and Bridget Prentice, then Under Secretary of State for the Ministry of Justice, who provided an overview of administrative justice across the UK. The afternoon speakers included Walter Merricks, former chief ombudsman of the Financial Ombudsman Service, who spoke about private sector ombudsmen schemes and their place in the administrative justice landscape; and Dr Jonathan Spencer, a member of the AJTC, who spoke about the work being undertaken by the AJTC to elaborate principles of administrative justice.

SCOTLAND

19. During the reporting year, in addition to their statutory work, our Scottish Committee has been heavily involved with work relating to the proposed tribunal reform programme in Scotland. Following on from the reports published in 2008 and 2009 by the Administrative Justice Steering Group (AJSG) under the chairmanship of Lord Philip, members have been exploring the various options for tribunal reform that the AJSG reports identify and investigating the implications related to the recommendation of the establishment of a Scottish Tribunals Service. The Committee have begun a consultation process with stakeholders to listen to their views on the various options for change. The consultation is due to be completed by late autumn; following consideration of the information it gathers the Committee will then provide comprehensive advice to Scottish Ministers by the end of 2010.
20. Structurally the Committee has also undergone significant changes over the past year, particularly in relation to the introduction of a portfolio approach to their work which has assigned each member with specific areas of responsibility.

WALES

21. In the past year the work of the Welsh Committee has been centred on the publication of its Special Report *'Review of Tribunals Operating in Wales'*, which as its title suggests, was the culmination of a root and branch review of the operation of tribunals in Wales. The aim was to map out the tribunals system in Wales, looking specifically at those tribunals listed under the Administrative Justice and Tribunals Council (Listed Tribunals) (Wales) Order 2007, as well as those concerned with reserved subject areas. Information was gathered by surveying tribunals directly and through consultation with delegates at the Committee's Conference in June 2009.

22. The Report was presented to Welsh Ministers in February 2010 and widely distributed to key stakeholders in Wales. In the interim period, Ministers have indicated that they accept the broad thrust of the recommendations in the Report. One of the Report's key recommendations – to establish a focal point for administrative justice in the Department of the First Minister and Cabinet – has already been implemented. A new post of Head of Administrative Justice Branch has now been established and in Autumn 2010 the report's wider recommendations are due to be debated in a plenary session by the National Assembly.
23. It is encouraging to note the new emphasis that is being given to administrative justice in Wales, which our Welsh Committee will monitor closely in the coming year.

TRIBUNAL STATISTICS

24. We have historically included in our Annual Reports statistical information about the tribunals and inquiries under our oversight. Last year we decided to publish this information on our website in order to make it more accessible to tribunal users and other stakeholders in the administrative justice system.
25. Since the Tribunals Service has now been fully in operation for almost 2 years, we believe it is more appropriate for the Tribunals Service to publish detailed statistical information about the tribunals within the new unified system.
26. The collection and collation of statistical information has always been a relatively labour intensive exercise to undertake each year for the AJTC and the former CoT. It does not seem sensible for us, effectively, to duplicate a function which more rightly falls to the Tribunals Service. The Senior President of Tribunals also shares that view. We believe that access to user-friendly statistical information is essential to ensure users are able to obtain a clear picture of the way tribunals operate.
27. We continue to monitor the performance of the Tribunals Service through our observer status at meetings of the Tribunals Service Management Board where a Balanced Scorecard and KPIs are reported, and through our membership of the Tribunals Service KPI Working Group.
28. In respect of tribunals outside the Tribunals Service, many of them already publish their statistics, either in their Annual Reports or on-line. We plan to encourage those systems which have not historically produced such information to begin to do so.
29. Due to the particular circumstances that exist in Scotland, our Scottish Committee has continued to collect statistical information for tribunals operating in Scotland. This information is published in the Scottish Committee's Annual Report 2009-10.

2. Carrying out projects to identify improvements

PRIORITY PROJECTS AND PROGRESS REPORTS

1. This section describes the work projects selected for action in 2009-10. Each project covers a broad priority area and aims to identify improvements for citizens in all or some sectors of the administrative justice system.
2. At the time of writing these projects were still in their early stages and only a limited report on their progress can be provided at this stage.

Principles for Administrative Justice

3. Building on a strong tradition of our existing *Framework of Standards for Tribunals*, we have developed a set of principles to inform our work in keeping the administrative justice system under review. The principles set out our expectations for decision making and dispute resolution, particularly as they affect individual citizens, placing them at the heart of the system.
4. In March 2010, we issued a paper '*Principles for Administrative Justice and the AJTC approach*' for public consultation. Around 200 stakeholders were invited to participate in the consultation process, which included a roundtable discussion in May 2010. Responses to the consultation, will be considered over the summer and the final *Principles* document will be launched in Autumn 2010.

Principles – Assessment Framework

5. Following on from the consultation on the Principles paper, we began developing an assessment framework to enable organisations to assess themselves against the Principles and to provide some insight into how we intend to measure the performance of the administrative justice system.
6. In March 2010 we also began work on a simplified user-friendly version of the Principles, which will be published in tandem with the final document in Autumn 2010.

AJTC/CQC joint project on Patients' Experiences of the First-tier Tribunal (Mental Health)

7. In conjunction with the Care Quality Commission (CQC) we are undertaking a joint project to investigate patients' actual experiences in applying to, and appearing before, the First-tier Tribunal (Mental Health) in order to provide information which may help to improve the administration of tribunal applications and the conduct of hearings. This will involve Commissioners of the CQC conducting interviews with a selection of patients who have recently applied to and appeared before the tribunal.
8. By the end of the reporting period the questionnaire for the CQC Commissioners' interviews with patients had been finalised and a number of Commissioners had agreed to be involved in conducting the interviews, which took place in June and July 2010. A joint AJTC/CQC report on the findings will be published later this year.

Time Limits for Social Security Appeals

9. We have begun work on a project aimed at highlighting the absence of a specific time limit in the Social Entitlement Chamber rules for the Department for Work and Pensions (DWP) agencies to respond to social security appeals; and to gather data about current delays in dealing with appeals by the agencies. The project has sought evidence from the organisations which provide advice, support and representation to appellants, highlighting the consequences of delays in getting appeals to a hearing.
10. To this end we met with a number of voluntary sector organisations, such as the National Association of Welfare Rights Advisers and Citizens Advice to obtain details of particular cases they have dealt with which were hampered by appeal delays. One of the project members also sits on a sub-group of the Tribunal Procedure Committee, which is currently considering the issue of a universal time limit for responding to social security appeals (see Section 3).
11. We have faced a degree of difficulty in obtaining current figures on appeal delays by the DWP and are still working with DWP and the Tribunals Service to obtain these.

Proportionate Dispute Resolution

12. This project involves a review of some of the relevant literature on proportionate dispute resolution (PDR) in order to outline the approach of, and the PDR techniques used within, administrative justice. The anticipated outcome of the project is to provide an overview of current research into the barriers and opportunities to users taking up other forms of dispute resolution techniques in administrative justice, and to recommend areas for policy development.
13. By the end of the reporting period we had identified a range of literature to be reviewed and the key stakeholders with whom we wished to engage as part of this work, which aims to report by March 2011.

“Getting it Right First Time”

14. This project aims to demonstrate the real benefits of ‘getting it right first time’ for users of public services, for decision makers and for taxpayers. As well as identifying areas of good practice, the project will demonstrate how feedback from redress mechanisms can help to improve initial decision making within public bodies and prevent the same problems from recurring.
15. We have already held a meeting with representatives from the National Audit Office and compiled a list of source material to inform this work. We also invited stakeholders to a roundtable discussion in May 2010 to identify and explore the development of relevant case studies.

Use of Technology

16. The aim of this project is to examine how more effective use of ITC – information technology and communications – can facilitate the administrative justice system, disseminate good practice and enhance access to the system by appellants.
17. We have begun work on a report reviewing how the use of modern information and communications technologies can facilitate access to justice and improve the administrative justice system. We have also liaised with key stakeholders in the wider justice system, including meeting with Ministry of Justice officials who are leading on IT.

PROJECTS IN MIND FOR FUTURE YEARS

18. In our Strategic Plan 2010-11 we identified broad priority areas in which we plan to take forward projects over the next three years. Our Action Plan 2010-11 set out the five priority projects that we are already undertaking. The following are projects which we hope to initiate in the near future:

Sectoral

- **Children with special educational needs:** comparing the various provisions for appeal against decisions affecting children with special educational needs in different parts of Great Britain, looking for the best way to ensure fair access and treatment for vulnerable users.
- **Local Government Tribunals:** reviewing the structure and role of tribunals which are sponsored by local government.
- **Asylum and Immigration:** reporting on the concerns of stakeholders in the system and making suggestions on how to improve the user experience in this area.
- **Employment Dispute Resolution:** assessing how changes to Employment Tribunal and ACAS procedures are impacting on the user experience and examining the scope for further cost-effective improvements.

Cross-cutting

- **Ombudsmen:** taking a strategic look at the increasing proliferation of Ombudsmen in the administrative justice landscape, and highlighting the scope for mutual learning from tribunals and other forms of dispute resolution.
- **Devolution:** reviewing the impact of devolution on the operation of the administrative justice system, and identifying examples of good practice from the different parts of the system.
- **The new framework for Tribunals:** evaluating and commenting on the continuing implementation of the Tribunals, Courts and Enforcement Act 2007 and the perceived strengths and weaknesses of the new arrangements.

RESEARCH WORK

19. The promotion of research into administrative justice is one of our new statutory functions under the Tribunals, Courts and Enforcement Act 2007. In June 2009, we held a Research Roundtable to which we invited leading members of the academic research community, research funding bodies, members of the judiciary, and representatives from the Ministry of Justice. The twin purposes of this event were to explore areas of administrative justice where further research is needed and, if possible, to achieve consensus on priorities.
20. Following the meeting, we developed two particular research proposals. The first relates to consideration of the role of feedback from tribunal hearings in improving the quality of original decision making. The second relates to the benefits and potential savings to be gained by decision makers getting their decisions “right first time”. These have since formed the basis of ongoing discussions with research funding bodies.
21. In parallel with these discussions, we concluded that future external research work would benefit from some detailed ‘pilot’ work undertaken in-house. For that reason, one of the projects being taken forward in 2010-11 – “Getting It Right First Time” – will specifically gather information that can be built upon later by academics and others.

3. Working with others to effect change

LIAISON THROUGHOUT THE YEAR WITH THE TRIBUNALS SERVICE

Chairman's attendance at Tribunals Service Management Board Meetings

1. Our Chairman continues to attend meetings of the Tribunals Service Management Board in an observer capacity, enabling him to participate in discussions about ongoing developments in the TS operational and planning processes. This has been a particularly difficult year for the TS as it struggles to cope with increasing workloads across the key tribunal jurisdictions, but largely in social security, immigration and employment appeals. The Chairman sees his principal role at these meetings as representing the voice of tribunal users, reflecting the AJTC's role as "critical friend" of the TS.
2. Among the agenda items that our Chairman has been particularly keen to influence is the "right first time" debate. In our view, in the face of ever rising caseloads, placing greater emphasis on getting more decisions right from the outset will create a real opportunity to do things differently rather than simply trying to do the same things better. Moreover, it would seem to make more sense to tackle the issue of rising appeal numbers at the front end of the process where there is greater scope to make a real difference.

Tribunal Procedure Committee

3. One of our members, Bronwyn McKenna, continues to sit as a member of the Tribunal Procedure Committee (TPC), which is responsible for making the rules governing the practice and procedure in the First-tier and Upper Tribunals of the Tribunals Service. She also represents the interests of the AJTC at the meetings of the TPC where her knowledge of the Rules across the various Chambers and jurisdictions within the First-tier and Upper Tribunals has been invaluable.
4. Bronwyn McKenna also sits as a member of a sub-group of the TPC which was established by the former TPC Chair, Lord Justice Elias, to consider how best to overcome the perceived difficulties of having a universal time limit for responding to social security appeals within the Social Entitlement Chamber Rules. She has championed this work from the outset and continued to press for real progress to be made, particularly when the impetus built up by the initial group membership appeared to be stalling. She is also in the lead on our own time limits project, aimed at highlighting the impact of appeal delays on tribunal users.

Attendance at the Tribunals Service Customer Service Board

5. One of our members, Penny Letts, represents AJTC on the TS Customer Service Board, which was set up in April 2009 to lead the TS in taking forward improvements in customer service delivery, in particular to help the organisation to achieve its customer satisfaction target measured by the annual National Customer Satisfaction Survey. The Board oversees the work of the TS Customer Service Unit.
6. In the 2008-09 survey, 65% of customers attending tribunal hearings were satisfied with their overall experience, against the KPI target of 72%. In the final quarter of interviewing for 2008-09 a new 'considered' satisfaction question was introduced into the survey to gauge overall opinion solely with aspects of service provided by the Tribunals Service. The overall 'considered' satisfaction rating for that quarter was higher than 'spontaneous' satisfaction (73% versus 65%). This new measure of considered satisfaction has been adopted by TS as the preferred method to measure performance against the KPI target. While recognising the efforts made by the TS to improve customer service delivery, the AJTC has pointed out that changing the method for measuring performance should not lead to complacency, since the overall satisfaction rating has not seen any significant improvement.
7. Over the past year, the AJTC has supported and encouraged the following measures being taken by the TS Customer Service Unit to improve customer service delivery:
 - The development of an annual Customer Satisfaction Delivery Plan – implementation of the Plan is overseen by the CS Board;
 - A review of all TS customer information, publications and website to ensure accuracy, helpfulness and improved service to customers;
 - Introducing a new web-based system of recording customer feedback and complaints and new methods of learning from feedback and monitoring performance in dealing with complaints and correspondence;
 - Developing and implementing a standard comment form and protocol to achieve greater insight into customers' needs;
 - Producing a list of minimum requirements and guidelines for the display of information and notices for every hearing centre;
 - Producing 'Reasonable Adjustment Guidance' for staff to ensure the needs of disabled customer are met.

LIAISON WITH OTHERS

Mental Health Stakeholder Group

8. The stakeholder group, which met on two occasions this year, continues to play a useful role in providing a forum for the stakeholders of this important jurisdiction to share information and experience with the tribunal's administrators and judiciary. We have recorded elsewhere our ongoing concerns about the tribunal, which we raised with the Chief Executive of the Tribunals Service, and which the Stakeholder Group discussed at one of its meetings.
9. The meetings provide an opportunity for administrators to present an update on the performance of the tribunal, which in the past year has shown encouraging signs of improvement in the face of rising caseload numbers, which were up by 13% over last year to 25,000 cases. Performance in respect of the KPI for listing cases has also improved across the board over last year but still remains unsatisfactory for non-restricted cases, with only 45% of cases being listed for hearing within 8 weeks.
10. The meetings have also discussed proposals for new listing arrangements, aimed at streamlining the process, which have been the subject of wider consultation with stakeholders. Efforts are continuing, and we are beginning to see improvement in some NHS Trusts, in the provision of access to patients' electronic records for tribunal medical members and legal representatives. There are still a number of outstanding issues to be resolved so far as widespread use of electronic records is concerned but tribunal administrators are continuing to engage with NHS Trusts to encourage this more widely.

War Pensions and Armed Forces Compensation Appeals Advisory Steering Group

11. The War Pensions and Armed Forces Compensation Appeals Advisory Steering Group, which our Chairman also chairs, met twice during the year. The main issue for discussion was alignment of the tribunal rules for the separate jurisdictions in England/Wales, Scotland and Northern Ireland. A paper on this topic, which had been prepared by Commissioner Mullan from Northern Ireland, was considered at one of the meetings. The paper highlighted the areas of divergence between the three jurisdictions in order to assess the extent to which users of the systems might be disadvantaged and made suggestions for improvement. It was agreed that whilst maximum alignment of the rules was the ideal position, the primary concern should be protecting the best interests of the tribunals' users. The intention is to brief the respective Ministers and the Tribunal Procedure Committee in due course, once the Group has completed its analysis of the respective positions.
12. The Group agreed to meet again once members are ready to report back on this matter.

Senior President's Report

13. We welcomed the first Annual Report of the Senior President of Tribunals, marking the first anniversary of the establishment of the new tribunal system. In his *'Tribunals Transformed'* report, the Senior President reflected on the tribunal reform process over the past five years from his particular perspective. It also included helpful contributions from the Presidents of the various Chambers within the new unified system, which we welcomed as filling a gap in knowledge about developments in individual jurisdictions which had previously been lost in the move to the unified system.

Judicial Studies Board

14. One of our members, Penny Letts, continues to represent the AJTC on the Judicial Studies Board (JSB) Tribunals Committee and on the editorial board of its *'Tribunals'* journal. Our Chairman is a member of the JSB's Advisory Council.
15. During the year, the JSB published its new training prospectus for judges and tribunal members, and others performing judicial or quasi-judicial functions. It details the range of courses, modules and sessions on offer from the JSB that aim to meet the needs of those who serve in a judicial capacity within the administrative justice system. The AJTC has promoted the prospectus through its electronic newspaper *Adjust* and at its annual conference, in particular to tribunals outside the Tribunals Service who could benefit most from the JSB's expertise.
16. The AJTC also participated in a joint JSB/TS Working Group to revise the JSB's Appraisal Standards Framework and to devise a set of competences for tribunal appraisers. This work was informed by the evaluation of training, mentoring and appraisal carried out by the JSB during 2007-09, and also built on recommendations of the Senior President's Tribunals Judiciary Welfare and Appraisal Group. The resulting publication *'Appraisal Standards and Appraiser Competences in Tribunals'* was endorsed by the Senior President and commended to all TS and non-TS tribunals.
17. A major item for discussion within the JSB over the past year has been the scope for unified training for the judiciary in both the courts and tribunals and how that can be achieved. These issues are being considered by the Unified Judicial Training Advisory Board (UJTAB), chaired by Lord Justice Sullivan, which is due to report to the Lord Chief Justice and the Senior President of Tribunals in Summer 2010. Our Chairman met with Lord Justice Sullivan in March 2010 to express support for a unified system, while stressing that the distinct training needs of tribunals judiciary must not be overshadowed.

Liaison with the Ministry of Justice

18. We continue to work closely with officials in the Ministry of Justice, both as our sponsor department but also with regard to developments in administrative justice and tribunals policy. We have had constructive discussions with both Peter Handcock, the then Director General of MoJ's Access to Justice, and Kevin Sadler, Chief Executive of the Tribunals Service, each of whom attended one of our meetings during the year.
19. The meeting with Peter Handcock provided a welcome opportunity for an exchange of views on the MoJ's Access to Justice strategy, including the department's plans to merge Her Majesty's Courts Service and the Tribunals Service. We were keen to ensure that the distinctive needs of tribunal users would be borne in mind in developing these plans further. Our underlying concern, examples of which have already been seen within some of the arrangements for the Tribunals Service, relates to the issue of 'creeping judicialisation'. Increasing the formality of tribunal proceedings runs the risk of eroding some of the fundamental elements of tribunals, which are intended to offer a higher degree of informality in their proceedings. We also highlighted the urgent need to address the devolution question, particularly at this time when Scotland and Wales are considering their own options for tribunal reform.
20. The Courts and Tribunals Integration programme has now been formally announced and is due to be rolled out from April 2011. In the coming year we intend to pay close attention to developments in this area and will report further in our next report.

DWP Standards Committee

21. Our Social Affairs Committee had a meeting with Suzy Brain England, Chair of the DWP's Decision Making Standards Committee (the Standards Committee), and Fiyaz Mughal, one of the Committee's members. The Standards Committee is a non-executive body which monitors the standards of decision making on benefits across the DWP, reporting to the Chief Executives of the decision making Agencies. The Committee's role is to provide independent advice on decision making standards, to make recommendations about where they could be improved and to consider specific issues affecting decision making standards.
22. We had a wide-ranging discussion about the role of the Committee, how it operates and what it has achieved in advising the DWP Agencies on improving their decision making processes. We raised particular concern about the inaccessibility of the Committee's Annual Reports, which are published (but not easy to find) on the DWP website, in a format that makes their findings and recommendations difficult to interpret by external interested parties. We suggested that by adopting a more accessible format and language the Committee's report could more effectively serve a dual function of providing useful management information about decision making to Agency Chief Executives and also better informing external observers.

23. In our evidence to the Work and Pensions Select Committee's inquiry into decision making and appeals (detailed in Chapter 4, page 24) we suggested that because of its non-statutory constitution, the Standards Committee is generally not perceived to be as independent as the former Chief Adjudication Officer.

Police Appeals Tribunals

24. At the July 2009 meeting of the Council of Tribunal Members' Association, one of the attending members, who chairs Police Appeals Tribunals, raised a question about the constitution of these tribunals. In particular, the constitution of tribunals for non-senior officers includes a member of the relevant police authority (i.e. the police force of which the officer is a member), which is thought to give rise to the perception of an officer's employer sitting on an independent tribunal, thereby creating an apparent conflict of interest.
25. Our predecessor body, the Council on Tribunals, was consulted in 2007 on proposals to amend the constitution of the tribunal with regard to the qualifications of the legal Chair and to provide for the constitution of tribunals hearing appeals from senior officers to include the Home Office Permanent Secretary or a nominated Home Office Director. The CoT expressed significant reservations about the proposed inclusion of the Home Office Permanent Secretary or one of his Directors in the tribunal's constitution, being members of the tribunal's sponsoring department, which we thought impinged on the perception of the tribunal's independence. Despite our advice, this change to the tribunal's constitution was subsequently enacted by the Criminal Justice and Immigration Act 2008.
26. We had a meeting to discuss these concerns with Vic Marshall, the lead policy official in the Home Office. With regard to the inclusion of the Permanent Secretary on tribunals for senior officers he explained that this had been proposed by police staff organisations and supported by the Association of Chief Police Officers. Nevertheless, we remain strongly of the view that the arrangements for the constitution of the tribunals for senior and non-senior officers do not accord with our expectations for proper judicial independence. Moreover, as regards the tribunals for non-senior officers including a member from the same police authority as the officer bringing the appeal, this must inevitably call into question the ability of the member to consider the case impartially. Mr Marshall advised that it is for each police authority to give guidance to their tribunals regarding conflict of interest issues and, in the event that an officer feels they have not had a fair hearing, the officer can apply to have the tribunal's decision judicially reviewed.
27. Because of our ongoing concerns about the arrangements for the constitution of Police Appeals Tribunals, which are the equivalent of Employment Tribunals for police officers, our Chairman has written to the new Home Secretary bringing these matters to her attention. We also understand that consideration is being given to bringing these tribunals within the Tribunals Service, which we believe should take place at the earliest opportunity.

Schools Adjudicators

28. We had a follow-up meeting with Dr Ian Craig, the Chief Schools Adjudicator, to discuss his recently published reports on fraudulent admission applications, the use of random or “lottery” allocation in admission arrangements, and procedures for admitting multiple siblings to the same school. He had been asked to prepare these reports by the Secretary of State in the light of perceived problems in these particular areas.
29. We took a particular interest in his report on fraudulent or misleading admission applications and noted one of his recommendations was to give further consideration to what sanctions might be applied against those parents whose applications are subsequently found to be fraudulent. Dr Craig advised that he had been asked to provide further advice to the Secretary of State on the kinds of sanctions that might be applied. We suggested that any sanctions should be proportionate and bear the best interests of the child in mind.
30. Dr Craig also clarified his own position vis-à-vis his statutory role as the independent adjudicator and this separate work that he has been undertaking on behalf of the Secretary of State. Dr Craig said he recognised the potential conflict of interest in undertaking special tasks on behalf of the Secretary of State and the need to maintain the independence of his office. In order to achieve this balance he has elected to deal with these matters personally, not involving any of the other adjudicators. This would seem to be a sensible approach.

UK Border Agency and the Independent Chief Inspector

31. Our interest in immigration and asylum relates not just to the respective tribunals but also involves looking at the sector more generally, including decision making by the UK Border Agency (UKBA). A number of different organisations work with or alongside the UKBA and we have also begun collaborating with these groups. As part of this, our Chairman attends a stakeholder group established by John Vine, Independent Chief Inspector of the UK Border Agency.

Asylum and Immigration Appeals

32. The Asylum and Immigration Tribunal was transferred into the unified structure in February 2010. Following our response to the earlier consultation *‘Immigration Appeals: Fair Decisions; Faster Justice’*, we were consulted on procedural rule amendments for the Upper Tribunal (Immigration and Asylum). Whilst we are represented on the Tribunal Procedure Committee, we chose to respond in brief directly.
33. We agreed with the overall aim that the rules should be simple and easy to follow. We were not convinced, however, that this had been achieved from the viewpoint of the user. In our view, a readily accessible, plain language guide to the Rules and Practice Directions is essential.

34. We were also pleased to note that the consultation acknowledged that the “rules would not be set in stone”. Whilst understanding that the immediate priority was to ensure the smooth and timely transfer of the AIT jurisdiction into the unified structure, we observed that there were matters which the TPC would no doubt wish to revisit. In particular, the very short time limits afforded to appellants and service by the respondent on the appellant of directions in asylum appeals are matters about which we continue to have concerns. Similarly, the bail provisions, by which an application can be made to either the First-tier or Upper Tribunal, but not both, do not appear to be justified.

Immigration Advice Sector

35. A further consultation ‘*Oversight of the Immigration Advice Sector*’ took place in the broader context of the simplification of immigration legislation. Our interest in this matter stems not just from our oversight of Immigration and Asylum Tribunals but also from our general interest in the work of the Immigration Services Commissioner. We have repeatedly expressed concerns about the quality of advice and representation available in this sector.
36. We supported the proposal contained in the consultation paper to enlarge and strengthen the powers of the Office of the Immigration Services Commissioner. We considered it appropriate to leave the door open to making the regulation of the immigration and asylum advice sector a reserved activity in England and Wales, but to devolve this power to Scotland.
37. A key driver of the proposals was to move regulation of the advice sector towards a fee-based system, where the providers cover the full cost of their own regulation. We recognise the importance of placing the funding of regulation on a more sustainable footing. In this area, however, the not-for-profit organisations perform a significant role and we expressed our concern that to impose full cost recovery by levying fees on providers would have a negative impact on services. We suggested that a full cost recovery system was not appropriate in this sector. If, as a very last resort, all service providers must be subject to registration fees, we suggested that a sliding scale of charges might be more acceptable. This could perhaps be based on the number of employees of each provider, and might help to ensure that the smallest service providers are not inadvertently forced out of the market.

Charging for Immigration and Visa Applications

38. As part of a consultation on charging for immigration and visa applications, the UK Border Agency considered the possibility of introducing fees for administrative reviews, reconsiderations or appeals of decisions on applications. It was suggested that instead of continuing to fund the appeals system by the taxpayer, that either visa fees be increased to cover the costs of appeal or appellants be charged a separate fee on appeal.

39. In our response we set out our position on fees which was established by our predecessor body, the Council on Tribunals. Our Guide to Drafting Tribunal Rules suggests that any provision for charging of fees should be exceptional. The Guide also states that where fees are charged, it is important that they are not set at a level which acts as a deterrent or practical impediment to access to the tribunal. We felt that if the costs of an appeal system were to be met by fees, it would be preferable that this amount be included in the general application fee rather than via a separate fee for appeal.
40. In February 2010, the then Immigration Minister, Phil Woolas MP, acknowledged that charging for appeals would be unjust.

Traffic Commissioners

41. The Department for Transport consulted us on Guidance from the Secretary of State for Transport to the Senior Traffic Commissioner.
42. Under the Local Transport Act 2008 (the Act) the Secretary of State appoints a Senior Traffic Commissioner (STC) who is given statutory powers *inter alia* to deploy Traffic Commissioners and to issue statutory Directions and Guidance to other Traffic Commissioners on administrative matters. The Act also makes provision for the Secretary of State to give guidance to the STC on the exercise of his functions and it was on the content of this guidance that the Department consulted.
43. We were concerned that neither the Traffic Commissioners' status as a listed tribunal under Schedule 7 of the Tribunals, Courts and Enforcement Act 2007, nor our oversight of them, were described in the guidance.
44. We broadly supported the underlying aims of the Department to encourage the consistent application of Traffic Commissioners' functions across Great Britain but sought reassurance that the continued independence of the Traffic Commissioners in respect of their judicial roles, both individually and collectively, would be preserved. The Government recognised this concern and in the final guidance made specific reference to the fact that the guidance relates only to administrative matters.
45. Many of the consultation questions related to issues which we believed were more properly internal matters for the Senior Traffic Commissioner, such as publishing guidelines about how he proposes to use his power to deploy Traffic Commissioners throughout Great Britain.

46. We expressed the view that it was important to ensure that the Senior Traffic Commissioner has adequate personal and budgetary support to deliver the agenda implicit in the guidance; that is, to deliver a transparent, modern, consistent, responsive service, which applies best practice and pursues continuous improvement. The guidance appeared to be an attempt to enable the Senior Traffic Commissioner to overhaul the entire decision making process. In our response we emphasised the importance of the Senior Traffic Commissioner being sufficiently resourced to carry out these tasks and monitor activities undertaken in the name of the Commissioners.

Employment Tribunals and the Public Interest Disclosure Act

47. The Department for Business, Innovation and Skills consulted on proposals to deal with claims to employment tribunals involving “whistleblower” allegations. The proposals included referring information in the applicant’s tribunal claim form to an appropriate regulator, with the applicant’s express consent, to take action where appropriate in connection with the whistleblower’s allegations.
48. We broadly supported the proposed process, agreeing that it would enable claims made under the Public Interest Disclosure Act (PIDA) to be investigated without imposing an additional burden on parties involved in an Employment Tribunal (ET) claim.
49. However, we were concerned that conflicting findings may result from concurrent PIDA investigations and ET proceedings, and that this may inadvertently create unnecessary appeals to the Employment Appeal Tribunal (EAT), or cause further delays in the process. We were also concerned by the potential for a PIDA investigation to take longer than the 42-day time limit within which EAT appeals must be lodged, leading to undue hardship for claimants, particularly if their claim is forwarded to more than one regulator for investigation.
50. We were also concerned that requiring claimants to provide consent for their information to be referred to an appropriate regulator at the lodgement stage of their Employment Tribunal claim form, could deter some users from lodging a claim at all, particularly if claimants do not have access to guidance on the consequences of providing consent. We suggested that consent should be sought at a later stage in the process, when ET3 claim forms were available.
51. We agreed with the proposed phased implementation of the process as the best way of ensuring that any new system would work effectively and without undue impact on tribunal users. We recommended that a phased implementation period should be used to run a pilot programme, measuring the effectiveness of the procedures and the impact of the new arrangements on users.
52. The Government’s response to the consultation addressed some of the issues we raised. In relation to concerns about potential delays or appeals to the EAT, the Government did not believe this issue would arise in practice. Nor did they agree that consent for information to be referred to a regulator be sought when the ET3 claim form became available.

53. However, the Government did accept our point that explicit guidance should be given to applicants about the implications of giving consent to refer whistle-blowing allegations to a regulator.
54. These proposed changes were introduced in April 2010. We will continue to watch this area of ET claims to monitor the effect of these changes.

Lands Tribunal: Fees and Costs

55. We were consulted on proposals for changes to fees and costs for appeals to the Lands Tribunal.
56. The Lands Tribunal has charged fees since its inception in 1949 under an agreement with the Treasury to recover 50% of its costs. The levels of fees charged have not been re-assessed since 1996, with the result that the tribunal has only been recovering 20% of its costs. The government proposed to increase fees so as to return to 50% recovery.
57. We appreciate that the agreement between the Treasury and the Tribunal must be respected. However, we noted our concern at the failure to review the fees since 1996, which has resulted in significant increases in this instance. We suggested that any inflation-based increase ought to be made on an annual basis so as to avoid such large increases occurring in future.
58. We also felt that the consultation methodology was unsound in some respects. The paper set out two different approaches which could be used to calculate variable fees, but the government declined to suggest a preferred route on the basis that the cost implications for both options appeared to be similar. We suggested that considerations other than cost, in particular the impact on access to justice, ought to have figured in the government's proposals and associated impact assessments.

4. Exploiting opportunities for our voice to be heard on behalf of users

WORK AND PENSIONS SELECT COMMITTEE INQUIRY: DECISION MAKING AND APPEALS IN THE BENEFITS SYSTEM

1. The House of Commons Work and Pensions Committee announced an inquiry into decision making and appeals in the benefits system, with particular regard to its effectiveness and how it could be improved. In respect of appeals, the Committee was interested in how the system operated from the users' perspective and whether there was sufficient support available to those people bringing appeals.
2. We submitted evidence to the Committee highlighting a number of user concerns, including:
 - The need for greater drive by the Department for Work and Pensions (DWP) to reduce the level of complexity in the benefit rules;
 - More needing to be done by the decision making Agencies to analyse systematically the outcomes of tribunal hearings in order to provide better guidance to decision makers;
 - Presenting Officers should attend tribunal hearings as a matter of course in order to assist tribunals and to provide a feedback link to decision makers;
 - The DWP should consider rolling out the Professionalism in Decision Making and Appeals training initiative across all its decision making Agencies;
 - Appeals should be lodged with the Tribunals Service rather than with the original decision making Agencies;
 - A uniform statutory time limit for responding to appeals should be introduced for the decision making Agencies;
 - Greater efforts are needed to reduce appeal delays and to provide meaningful information for tribunal users about how long appeals take to get to a hearing.
3. We were pleased to note that many of the issues we raised were highlighted in the Committee's final report. In particular, the Committee recognised the need to reduce delay in the appeals process and shared our view of the need for a statutory time limit for the DWP to respond to appeals, recommending a one month time limit from the date an appeal is lodged.

4. The response by the previous government, which was published just before the announcement of the general election, was largely disappointing in its failure to address seriously many of the report's recommendations. The response dismissed the recommendation for a one month time limit on grounds that it would not improve the situation, without any explanation of the reason for taking that view.
5. Our Chairman has written to the new Secretary of State outlining our ongoing concerns and highlighting the potential financial benefits that would accrue from streamlining the decision making and appeals processes and getting more decisions "right first time".

TRAINING FOR ADMISSION APPEAL PANEL MEMBERS AND CLERKS

6. In our 2007-08 Report we reported that the then Department for Children, Schools and Families had agreed to legislate to make provision for mandatory training for appeal panel members and clerks. This was achieved through the Education (Admission Appeals Arrangements) (England) (Amendment) Regulations 2007, which provides for all panel members and clerks to have received prescribed training within the previous two years as a requirement to being allowed to hear appeals. In order to avoid a burdensome training requirement for existing members and clerks, the regulations provided that the training requirement was deemed to be satisfied for all those who had served as a member or clerk from 1 March 2007 until 29 February 2008. This provision, however, ceased to apply from 1 March 2010, from which time all members and clerks are required to satisfy the new training requirement. We were concerned that many clerks and members may not be aware of this and that appeals for this year's admission round might be compromised as a result.
7. Our Chairman wrote to the then Secretary of State raising this and noting that the AJTC had begun receiving enquiries from appeals clerks enquiring where they might obtain assistance in accessing good quality training for themselves and their panel members. This was an issue we had raised with the department in our response to consultation on the draft 2007 regulations. We highlighted the lack of access to good quality training, particularly in respect of the clerks to the panels serving voluntary-aided and foundation schools, which are their own admission authorities. We invited the department to consider updating the training material produced by the organisation '*Information for School and College Governors*', which they had funded a few years earlier.

8. In her response the Parliamentary Under Secretary of State at that time confirmed that departmental officials were considering ways of disseminating good practice training provision for panel members and clerks, including updating the existing material, combined with good practice training guidance from local authorities, which could be made more widely available. However, her reply did not fully address the more crucial point about the need to ensure that panel members and clerks were aware of the universal application of the mandatory training requirement. We intend to monitor this issue closely at our forthcoming visits to hearings and have also brought it to the attention of the local government ombudsman as an issue to bear in mind in dealing with complaints about admission appeal panels.

JOINT COMMITTEE ON HUMAN RIGHTS: ENHANCING PARLIAMENT'S ROLE IN RELATION TO HUMAN RIGHTS JUDGMENTS

9. In 2008, the former Council on Tribunals had expressed concern as to whether the limited appeal provisions in the Safeguarding Vulnerable Groups Act 2006 were compliant with Article 6 of the European Convention on Human Rights (ECHR). We were therefore interested in the judgment of the Court of Appeal in *Governors of X School v R (on the application of G) & Ors [2010] EWCA Civ 1*. In this case, the Court held that in any proceedings leading up to a person being placed on a list barring them from working with children or vulnerable adults, Article 6 of the ECHR is engaged, since the claimants' civil right to practise his profession is affected. The Court concluded that this result could not be dislodged by the existence of a limited right of appeal on a point of law to the Upper Tribunal from a decision of the Independent Safeguarding Authority (ISA), since the merits of the ISA's decision lay beyond the Upper Tribunal's jurisdiction.
10. Our Chairman decided to raise this matter with the Chair of the Joint Select Committee on Human Rights in connection with its review of Parliament's role in relation to human rights judgments. Our continuing concern is that an individual who is found by the ISA to be unsuitable to work with children or vulnerable adults, and thereby potentially deprived of their livelihood, should have access to a full right of appeal on the merits of the ISA's decision and not just on the limited ground of error of law or fact. The Select Committee's report included our Chairman's letter, acknowledging the seriousness of our concerns and recommending that the government respond directly to the issues raised, including its analysis of the compatibility of the appeal provisions in the Safeguarding Vulnerable Groups Act 2006 (SVGA). Our Chairman subsequently wrote to the Home Secretary providing further background information about our concerns, which have been well documented in previous annual reports. However, his letter arrived after the pre-election period prior to the beginning of the general election.

8. On 15 June 2010 the new Home Secretary announced that registration with the vetting and barring scheme was being halted to enable the government to undertake a review of the scheme, which was widely believed to be disproportionate and overly burdensome in its operation. Following the announcement of this review our Chairman wrote to the new Home Secretary inviting her to take the opportunity to consider whether the associated SVGA appeal provisions are fair, open and accessible.

WELFARE REFORM BILL

9. In last year's report we outlined concerns we had raised with the then Secretary of State for Work and Pensions about provisions in the Welfare Reform Bill transferring from the courts to the new Child Maintenance and Enforcement Commission (CMEC) responsibility for making an order to disqualify a person from holding a driving licence or passport as a sanction for failing to comply with a child maintenance order. Moreover, the Bill also provided a right of appeal against the imposition of such an order to the magistrates court or sheriff court in Scotland, thereby incurring costs for appellants in exercising their appeal rights.
10. The response from the then Parliamentary Under Secretary of State was disappointing by its failure to recognise the potential injustice that could be caused to anyone against whom such an order was made. In particular, it failed to acknowledge the inappropriateness of such decisions, potentially affecting the fundamental liberties of individuals, being taken by relatively junior administrators in the CMEC. It also failed to acknowledge the financial disincentive for those wishing to bring an appeal, both in terms of initial court fees and the potential for the court to make a costs order, in some instances even where an appeal is allowed.
11. The Minister pointed out that these new provisions would be likely to affect only a small minority of parents who consistently and wilfully refuse to meet their obligations to support their children financially. There would also be a range of safeguards designed to ensure that the new powers are only used against those who will not, rather than those who cannot, pay child maintenance, and only when the CMEC has exhausted other options. Whilst this provides some reassurance, we remain of the view that a decision to remove someone's driving licence or passport for failing to comply with a child maintenance order should be matters for the courts and not administrators in CMEC. Furthermore, any appeal right from such a decision by CMEC should lie to the First-tier Tribunal rather than the courts, both in order to apply the appropriate level of expertise and to avoid court fees and costs.

FIRST-TIER TRIBUNAL (MENTAL HEALTH)

12. Our concerns about the former Mental Health Review Tribunal, now the First-tier Tribunal (Mental Health), have been well documented in past annual reports. The Mental Health Tribunals Stakeholder Group continues to provide a useful forum for stakeholders to exchange views with tribunal administrators and judiciary about the operation of the tribunal. Nevertheless, we became aware of a growing perception of renewed concern about the tribunal, which unfortunately coincided with a hiatus in appointing a new Head of Administration following the departure of the previous post-holder who had been successful in establishing real momentum for change following the move of the administration from London to Leicester. Some members of the tribunal contacted us expressing the view that, having been encouraged by signs of real improvement, matters seemed to be slipping back again. These views were reinforced in discussion with members of the tribunal at a number of mental health conferences which we attended. The areas of concern included:
 - Ongoing concerns about late booking of tribunal members;
 - Lack of up-to-date medical reports for hearings;
 - Hearing papers not arriving until the day of the hearing, or the day before;
 - Delays in cases getting to hearing;
 - Lack of clerking support for tribunals;
 - Breakdown in communication links between tribunal judges and administrators, particularly with regard to the promulgation of decision letters.

13. Our Chairman raised these matters with Kevin Sadler, the Chief Executive of the Tribunals Service who acknowledged the seriousness of the issues and set out details of the actions that were being taken to remedy the situation. Among the most noteworthy actions were the establishment of a tribunal members' focus group to provide advice on current issues to the new Secretariat Head and give feedback on proposals for organisational change; and the setting up of a dedicated feedback 'in-box' for members to provide views on general tribunal related issues. Both of these initiatives should go some way to resolving the difficulties which arise through poor channels of communication between members and administrators. Later in the year, Kevin Sadler provided a helpful update of the progress being made in resolving many of these areas of concern and in seeking to address the unique difficulties faced in this jurisdiction and the "whole system" issues which need to be solved to enable sustained improvement in tribunal performance.

STAKEHOLDER REPORT TO THE INDEPENDENT CHIEF INSPECTOR OF THE UK BORDER AGENCY

14. In 2009, members of the Economic and Regulatory Committee undertook a series of networking visits to stakeholders in the asylum and immigration sector, including the United Nations High Commissioner for Refugees. These visits enabled the AJTC to gain a better understanding of the services and support available to users and also afforded stakeholders the opportunity to raise with us any issues about the operation of the system.
15. We compiled a summary paper, outlining some of the key issues raised during the visits, which included:
 - The need to ensure that there is early screening of asylum seekers to identify torture survivors. This may require the use of timely medical screening, and would also require further training in gender appropriate techniques to facilitate the collection of quality evidence at the earliest opportunity;
 - Development of a decision template, designed by UKBA to assist Case Owners to structure interviews and draft refusal letters;
 - The benefits of the Solihull New Asylum Model Early Legal Advice Pilot;
 - The possible creation of an accreditation scheme for UKBA Case Owners;
 - Concerns that complying with the Legal Services Commission's graduated fees system will compromise the quality of service and constrain access to justice of vulnerable users.
16. We shared our findings with John Vine, Independent Chief Inspector of the UK Border Agency, and Lin Homer, Chief Executive of the UK Border Agency. We propose to liaise with key stakeholders in the system on this matter.

UNIVERSITY OF MANCHESTER CONFERENCE: DISPUTE RESOLUTION AND AVOIDANCE IN EDUCATION

17. Several of our members attended a dispute resolution conference aimed at disseminating the findings of research into 'Dispute Resolution of Special Educational Needs', funded by the Economic and Social Research Council. This was of particular interest to us, both in respect of our oversight of the First-tier Tribunal (SEN and Disability) and our wider interest in the promotion of ADR as an alternative to tribunal hearings. The use of ADR in dealing with SEN disputes has long been regarded as a potentially effective tool in appropriate settings, but which in practice has not had much success in reducing the number of cases going on to a full hearing.
18. Professor Neville Harris from Manchester University and Professor Sheila Riddell from Edinburgh University presented the findings of their research study looking at how local authorities attempt to resolve disputes in SEN without resort to a tribunal, the effectiveness of their approaches and the extent to which the policy objectives of encouraging greater use of ADR are realisable.
19. The key findings of the research were not entirely unpredictable e.g. mediation is under-utilised; it does not reduce appeal numbers; its value is not widely acknowledged; parents probably settle for too little; mediation has a potential role within the appeal process; and child participation is still largely neglected in all dispute resolution processes.
20. Two of our members gave an address about our new wider statutory role, with a particular focus on promoting more effective use of ADR in the administrative justice system, and in SEN appeals in particular. They highlighted some of the barriers to this gleaned from our observations of SEN hearings and our links with stakeholders in this jurisdiction, including:
 - missed chances in the process to minimise conflict and focus on the key issues in disputes;
 - missed opportunities to avoid appeal hearings altogether;
 - the failure by local authorities to highlight mediation as an option for parents, directing them to the appeals process from the outset of disputes;
 - the high success rate of appeals acts as a disincentive to accept mediation as an adequate alternative;
 - the perverse incentive for LAs to encourage appeals as a means of unlocking additional cash to implement SEN needs identified by tribunals.

Appendix A

Membership of the AJTC and its Scottish and Welsh Committees*

This year saw the departure of the following members:

- **Lord Newton of Braintree OBE DL**, Chairman of the Council on Tribunals and the AJTC from October 1999 until August 2009
- **Professor Alistair MacLeary**, Chairman of the Scottish Committee from September 2005 until August 2009
- **Elizabeth Cameron**, member of the Council and Scottish Committee from September 2002 until March 2009
- **Sue Davis CBE**, member of the Council from December 2005 until January 2010
- **Professor Genevra Richardson CBE, FBA**, member of the Council from February 2001 until January 2010
- **Pat Thomas CBE**, member of the Council from December 2005 until January 2010
- **Eileen MacDonald**, member of the Scottish Committee from July 2007 until September 2009.

The past year also saw the retirement of **Alexander Hermon** who joined the former Council on Tribunals in 1988 and served as our legal adviser for almost 22 years. Alex's wealth of knowledge about the history of the AJTC and former CoT, and the tribunals and inquiries under our oversight, was unparalleled. His unique insights and invaluable advice are sorely missed.

¹ Dates shown include members' appointment to the Council on Tribunals, where appropriate.

AJTC MEMBERSHIP AT 31 MARCH 2010

Richard Thomas CBE, LLD: Chairman of the AJTC since 1 September 2009. Information Commissioner from November 2002 until June 2009. Currently Deputy Chairman of the Consumers Association, Trustee of the Whitehall and Industry Group, adviser to the Centre for Information Policy Leadership and board member of the International Association of Privacy Professionals.

Richard Henderson CB, WS: Solicitor to the Scottish Executive and Head of the Government Legal Service for Scotland until 2007. President of the Law Society of Scotland from 2007-2009. Board Member of Signet Accreditation. Member of the AJTC and Chair of the Scottish Committee from August 2009, member of Scottish Committee from January 2009.

Professor Sir Adrian Webb: First Vice-Chancellor of the University of Glamorgan from 1992-2005. Chair, Pontypridd and Rhondda NHS Trust; Non Executive Director, Welsh Assembly Government until March 2008. Chair of the Wales Employment and Skills Board and Wales Commissioner on the UK Commission for Employment and Skills. Member of the AJTC from May 2008 and Chair of the Welsh Committee from June 2008.

Jodi Berg: Currently Independent Complaints Reviewer for public bodies and partner in the Independent Complaint Resolution Service (ICRS). Authority member of the Human Tissue Authority; Chair of the Postal Redress Service (POSTRS). Solicitor, mediator, magistrate and Fellow of the Chartered Institute of Arbitrators. Member of the AJTC since December 2008.

Professor Alice Brown CBE: Emeritus Professor, University of Edinburgh. Scottish Public Services Ombudsman from 2002-2009. Currently Sunningdale Fellow, Trustee of the David Hume Institute, and Chair of the Advisory Group of the Royal College of Physicians of Edinburgh. Member of the AJTC since December 2008.

Professor Andrew Coyle CMG: Professor of Prison Studies, Kings College London. Member of the Judicial Appointments Board for Scotland. Member of the AJTC and the Scottish Committee from September 2009.

Kate Dunlop: Chief Executive, Glasgow Credit Union and Non Executive Director of the charity the Centre for Confidence and Wellbeing. Independent business adviser. Member of the AJTC since February 2010.

Sukhvinder Kaur-Stubbs: Chair of the Board of Trustees, Volunteering England and non-executive board member of Consumer Focus. Better Regulation Taskforce Member from 2001-2006. Chief Executive of the Barrow Cadbury Trust from 2001-2009. Member of the AJTC since February 2010.

Penny Letts OBE: Policy Consultant and Trainer. Former Law Society Policy Advisor. Member of the Mental Health Act Commission 1995-2004. Member of the Judicial Studies Board's Tribunals Committee since May 2003. Member of the Council since September 2002.

Bronwyn McKenna: Solicitor. Director at UNISON. Member of the Central Arbitration Committee since 2002. Sits on the Employment Law Committee of the Law Society of England and Wales and chairs the Legislative and Policy Committee of the Employment Lawyers Association. Member of the Council since May 2007.

Bernard Quoroll: Solicitor and CEDR registered mediator. Local authority chief executive for 16 years in three local authorities. Council member of the Postal Redress Service (POSTRS). Member of the Council since May 2003.

Professor Mary Seneviratne: Professor of Law at Nottingham Law School, Nottingham Trent University. Board member of the Office for Legal Complaints. Member of the AJTC since February 2010.

Dr Jonathan Spencer CB: Senior civil servant at DTI and MoJ from 1974-2005. Chair, Church of England Pensions Board; Non-executive Director, East Kent Hospitals Foundation Trust; company director. Member of the Council since December 2005.

Dr Adrian V Stokes OBE: Non-Executive Director of Barnet Primary Care Trust and Special Trustee of the Royal National Orthopaedic Hospital NHS Trust. Governor, University of Hertfordshire. Founder Governor, Motability. Chairman, *Mobilise*. Member of Disability Appeal Tribunals from 1992-2003. Member of the Council since November 2003.

Brian Thompson: Senior Lecturer in Law at the University of Liverpool. Member of the Panel of Specialist Advisers to the House of Commons Public Administration Select Committee, and Consultant on Public Law to the Northern Ireland Ombudsman. Member of the Council since 2007.

Ann Abraham: UK Parliamentary Ombudsman and Health Service Ombudsman for England. Ex-officio member of the Council since appointment in November 2002. Ex-officio member of Scottish and Welsh Committees.

Full details about each of the members of the AJTC can be viewed on the AJTC's website at www.ajtc.gov.uk

Appendix B

Cost of the AJTC and its Scottish and Welsh Committees

This section contains details of the AJTC's income and expenditure for the financial year ending 31 March 2010, with the corresponding 2009-10 figures for comparison.

The AJTC is funded through the Ministry of Justice. Certain costs such as accommodation, IT and accounting/payroll services are funded centrally and do not feature in the account below. Other costs, such as staff pay rates, are determined centrally but paid from the AJTC budget.

	AJTC		Scottish Committee		Welsh Committee	
	08/09	09/10	08/09	09/10	08/09	09/10
Staff Salaries ¹	408,927	434,781	70,179	77,294	10,800	26,224
Members' Retainers ²	260,464	297,437	32,227	42,155	14,242	19,385
Members' Travel etc ³	31,764	29,111	3,638	5,361	4,076	4,840
Consultancy ⁴	–	–	5,738	–	–	–
Agency Staff ⁵	103,907	65,204	–	–	36,515	24,255
Printing and Publishing ⁶	25,647	29,116	3,313	3,535	–	–
Other Admin Costs ⁷	80,296	125,167	16,049	9,485	–	–
Capital expenditure	–	–	–	–	–	–
Totals	910,375	980,816	131,144	140,263	65,633	74,704

Notes

1. The staff of the AJTC's Secretariat are civil servants seconded from the Ministry of Justice and the Scottish Government. Salary costs include employer's National Insurance Contributions and superannuation. Welsh Committee staff salaries are apportioned on the basis of their time spent on Welsh Committee duties.
2. The retainer for the AJTC Chairman is £56,051 and £28,025 for the Scottish and Welsh Committee Chairmen. The retainers for Members of the AJTC (based on 44 days work per year), the Scottish Committee (based on 35 days work per year) and Welsh Committee (based on 22 days per year) are £12,816, £10,194 and £6,408 respectively. The figures for Members' retainers include the remuneration of the Scottish and Welsh Committee Chairmen and the members of the AJTC who are also members of the Scottish Committee. Delay in paying members appointed in January 2009 means that some expenditure relates to 2008/09. These costs include employer's National Insurance Contributions.
3. Members' expenses for attending meetings of the AJTC, visits to tribunals and other events, including Scottish Committee expenses for attending meetings held in London.
4. There was no consultancy expenditure during the year.
5. Agency personnel are engaged as required to cover vacancies and absences and to provide specialist skills. The figure includes costs for the Secretary to the Welsh Committee of the AJTC.
6. Design and printing including costs of the new logo strap line.
7. Other general administrative expenditure including the AJTC Conference and other events, office supplies, postage, and catering for meetings. The Welsh Committee currently does not have its own secretariat and consequently its running costs are met by the AJTC.

Appendix C

Note on the constitution and functions of the Administrative Justice and Tribunals Council

1. The Administrative Justice and Tribunals Council (AJTC) was set up by the Tribunals, Courts and Enforcement Act 2007 to replace the Council on Tribunals.
2. The AJTC consists of not more than 15 nor less than 10 appointed members. Of these, either two or three are appointed by the Scottish Ministers with the concurrence of the Lord Chancellor and the Welsh Ministers; and either one or two are appointed by the Welsh Ministers with the concurrence of the Lord Chancellor and the Scottish Ministers. The remainder are appointed by the Lord Chancellor with the concurrence of the Scottish Ministers and the Welsh Ministers.
3. The Lord Chancellor, after consultation with the Scottish Ministers and the Welsh Ministers, nominates one of the appointed members to be Chairman of the AJTC. The Parliamentary Commissioner for Administration (the Parliamentary Ombudsman) is a member of the AJTC by virtue of her office.
4. The Scottish Committee of the AJTC consists of the two or three members of the AJTC appointed by the Scottish Ministers (one being nominated by the Scottish Ministers as Chairman) and three or four other members, not being members of the AJTC, appointed by the Scottish Ministers. The Parliamentary Ombudsman and the Scottish Public Services Ombudsman are members of the Scottish Committee by virtue of their office.
5. The Welsh Committee of the AJTC consists of the one or two members of the AJTC appointed by the Welsh Ministers (one being nominated by the Welsh Ministers as Chairman) and two or three other members, not being members of the AJTC, appointed by the Welsh Ministers. The Parliamentary Ombudsman and the Public Services Ombudsman for Wales are members of the Welsh Committee by virtue of their office.
6. The principal functions of the AJTC as laid down in the Tribunals, Courts and Enforcement Act 2007 are:
 - a) to keep the administrative justice system under review;
 - b) to keep under review and report on the constitution and working of listed tribunals; and
 - c) to keep under review and report on the constitution and working of statutory inquiries.

7. The AJTC's functions with respect to the administrative justice system include considering ways to make it accessible, fair and efficient, advising the Lord Chancellor, the Scottish Ministers, the Welsh Ministers and the Senior President of Tribunals on its development and referring to them proposals for change, and making proposals for research.
8. The "administrative justice system" means the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including the procedures for making such decisions, the law under which they are made, and the systems for resolving disputes and airing grievances in relation to them.
9. The AJTC's functions with respect to tribunals include considering and reporting on any matter relating to listed tribunals that the AJTC determines to be of special importance, considering and reporting on any particular matter relating to tribunals that is referred to the AJTC by the Lord Chancellor, the Scottish Ministers and the Welsh Ministers, and scrutinising and commenting on legislation, existing or proposed, relating to tribunals.
10. "Listed tribunals" are the First-tier Tribunal and Upper Tribunal established by the 2007 Act and tribunals listed by orders made by the Lord Chancellor, the Scottish Ministers and the Welsh Ministers. The AJTC must be consulted before procedural rules are made for any listed tribunal except the First-tier Tribunal and Upper Tribunal. The AJTC is represented on the Tribunal Procedure Committee that makes procedural rules for the First-tier Tribunal and Upper Tribunal.
11. The AJTC's functions with respect to statutory inquiries include considering and reporting on any matter relating to statutory inquiries that the AJTC determines to be of special importance, and considering and reporting on any particular matter relating to statutory inquiries that is referred to the AJTC by the Lord Chancellor, the Scottish Ministers and the Welsh Ministers.
12. "Statutory inquiry" means an inquiry or hearing held by or on behalf of a Minister of the Crown, the Scottish Ministers or the Welsh Ministers in pursuance of a statutory duty, or a discretionary inquiry or hearing held by or on behalf of those Ministers which has been designated by an order under the Tribunals and Inquiries Act 1992. The AJTC must be consulted on procedural rules made by the Lord Chancellor or the Scottish Ministers in connection with statutory inquiries.
13. Members of the AJTC and the Scottish and Welsh Committees have the right to attend (as observer) proceedings of a listed tribunal or a statutory inquiry, including hearings held in private and proceedings not taking the form of a hearing.
14. The AJTC has no authority to deal with matters within the legislative competence of the Northern Ireland Assembly.

15. The AJTC must formulate, in general terms, a programme of the work that it plans to undertake in carrying out its functions. It must keep the programme under review and revise it when appropriate. It must send a copy of the programme, and any significant revision to it, to the Lord Chancellor, the Scottish Ministers and the Welsh Ministers.
16. The AJTC must make an annual report to the Lord Chancellor, the Scottish Ministers and the Welsh Ministers, which must be laid before Parliament, the Scottish Parliament and the National Assembly for Wales. The Scottish Committee must make an annual report to the Scottish Ministers, who must lay the report before the Scottish Parliament. The Welsh Committee must make an annual report to the Welsh Ministers, who must lay the report before the National Assembly for Wales.

Appendix D

Statutory Instruments 2009/2010

Listed below are the Statutory Instruments (excluding Orders under the Traffic Management Act 2004) considered by the Administrative Justice and Tribunals Council and made during the period 1 April 2009 to 31 March 2010.

The Children's Hearings (Legal Representation) (Scotland) Amendment Rules 2009	S.S.I. 2009/211
The Copyright Tribunal Rules 2010	S.I. 2010/791
The Education (Admission Appeals Arrangements) (Wales) (Amendment No. 2) Regulations 2009	S.I. 2009/1500
The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2010	S.I. 2010/131
The First-tier Tribunal (Gambling) Fees (Amendment) Order 2010	S.I. 2010/633
The First-tier Tribunal (Gambling) Fees Order 2010	S.I. 2010/42
The Goods Vehicles (Enforcement Powers) (Amendment) Regulations 2009	S.I. 2009/1965
The Goods Vehicles (Licensing of Operators) (Amendment) Regulations 2010	S.I. 2010/455
The Goods Vehicles (Licensing of Operators) (Fees) (Amendment) Regulations 2010	S.I. 2010/464
The Infrastructure Planning (Examination Procedure) Rules 2010	S.I. 2010/103
The Lands Tribunal for Scotland Amendment (Fees) Rules 2009	S.S.I. 2009/260
The Lands Tribunal for Scotland Amendment Rules 2009	S.S.I. 2009/259
The Legal Services Act 2007 (Consequential Amendments) Order 2009	S.I. 2009/3348
The Local Authorities (Case and Interim Case Tribunals and Standards Committees) (Amendment) (Wales) Regulations 2009	S.I. 2009/2578
The National Health Service (Discipline Committees) (Scotland) Amendment Regulations 2009	S.S.I. 2009/308
The National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009	S.S.I. 2009/183
The Patents and Patents and Trade Marks (Fees) (Amendment) Rules 2010	S.I. 2010/33
The Pensions Appeal Tribunals (Scotland) (Amendment) Rules 2009	S.S.I. 2009/353

The Public Service Vehicles (Enforcement Powers) Regulations 2009	S.I. 2009/1964
The Public Service Vehicles (Operators' Licences) (Fees) (Amendment) Regulations 2010	S.I. 2010/457
The Public Service Vehicles (Registration of Local Services) (Quality Contracts Schemes) (England and Wales) Regulations 2009	S.I. 2009/3245
The Quality Contracts Schemes (QCS Boards) (England) Regulations 2009	S.I. 2009/3243
The Quality Partnership Schemes (England) (Amendment) Regulations 2009	S.I. 2009/3248
The Quality Partnership Schemes (Wales) Regulations 2009	S.I. 2009/3293
The Road Traffic (Parking Adjudicators) (Renfrewshire Council) Regulations 2010	S.S.I. 2010/98
The School Admissions (Admission Arrangements) (England) (Amendment) Regulations 2009	S.I. 2009/1099
The Trade Marks (International Registration) (Amendment) Order 2009	S.I. 2009/2464
The Trade Marks and Trade Marks and Patents (Fees) (Amendment) Rules 2009	S.I. 2009/2089
The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010	S.I. 2010/21
The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009	S.I. 2009/1307
The Upper Tribunal (Lands Chamber) Fees Order 2009	S.I. 2009/1114
The Valuation Tribunal for Wales Regulations 2010	S.I. 2010/713
The Water Services Charges (Billing and Collection) (Scotland) Order 2010	S.S.I. 2010/10