

Public Bodies Bill: reforming the public bodies of the Ministry of Justice

Administrative Justice and Tribunals
Council consultation responses

December 2012

AJTC - responses to consultation

On-line questionnaire responses:

1. Anonymous
2. Anonymous
3. A Magistrate
4. Anonymous
5. Anonymous
6. Anonymous
7. Chris Bell
8. Brenda Margaret Crisell
9. Edward Clarke
10. Tanya Callman
11. Professor Gavin Drewry
12. Robert Wyllie
13. Stephen Pope
14. Martyn Weller
15. Alex Cosgrove
16. Anonymous
17. Sheila Carmen Charles
18. Kevin Burdekin
19. Victim Support
20. Anonymous
21. Anonymous

Other responses:

1. Professor Colin T Reid
2. AJTC
3. British and Irish Ombudsman Association
4. Dr Niall MacKinnon
5. Bernard Quoroll
6. Scottish Ministers
7. Mencap
8. Education Appeals Support Initiative Group
9. The Honourable Lady Smith, Chair of the Scottish Tribunals Forum
10. Valuation Tribunal Service Board
11. Trading Standards Institute
12. Consumer Focus Scotland
13. Law Society
14. Local Government Ombudsman
15. Senior President of Tribunals
16. Londonwide Education Appeals Support Initiative
17. Parliamentary & Health Service Ombudsman
18. Angela Truell
19. The Welsh Government
20. JUSTICE

**Stakeholders notified of the publication of the consultation document
(excluding agencies of the Ministry of Justice and other government
departments)**

These stakeholders were identified as having a specific interest in one or more of the department's bodies in the Public Bodies Bill. Responses were not limited to those listed here and views from others with an interest in one or more of the bodies were welcomed.

Statutory consultees

The body or holder of the office to which the proposal relates

Such other persons appearing to the minister to be representative of interests substantially affected by the proposal (see other consultees below)

Scottish Ministers if the proposal relates to any matter, so far as applying in or as regards Scotland in relation to which the Scottish Ministers exercise functions

A Northern Ireland Department if the proposal relates to any matter, so far as applying in or as regards Northern Ireland, in relation to which the department exercises functions

Welsh Ministers, if the proposal relates to any matter so far as applying in or as regards Wales, in relation to which the Welsh Ministers exercise functions

The Lord Chief Justice where the functions affected by the proposal relate to the administration of Justice

Such other persons as the ministers considers appropriate (see other consultees below)

Other consultees

General

Departmental Trade Union Side

Administrative Justice and Tribunals Council

British and Irish Ombudsmen Association

Senior President of Tribunals

Courts Boards

Justices' Clerks' Society

The Bar Council

The Law Society

The Magistrates' Association

Crown Court Rule Committee

The Bar Council

The Law Society

Magistrates' Courts Rule Committee

Council of District Judges (Magistrates' Courts)

Justices' Clerks' Society

The Bar Council

The Law Society
The Magistrates' Association

Office of the Chief Coroner
Action against Medical Accidents
Association of Chief Police Officers
British Lung Foundation
Cardiac Risk in the Young
Coroners' Court Support Service
Coroner Officers Association
Coroners' Society
Cruse Bereavement Care
INQUEST
Local Government Association
The Royal British Legion
Victim Support

Public Guardian Board
Action for Advocacy
Age UK
Alzheimer's Society
Council for Healthcare Regulatory Excellence
Mental Health Lawyers' Association
Mental Health Media Alliance
Mental Health Provider Forum
Nursing and Midwifery Council
Social Care Institute for Excellence
Solicitors for the Elderly Association
Solicitors' Regulation Authority
The Law Society

Victims' Advisory Panel
Advocacy After Fatal Domestic Abuse
Assist Trauma Care
Brake
Eaves Housing
Escaping Victimhood
Justice After Acquittal
Mothers Against Murder and Aggression UK
National Victims' Association
Rape Crisis (England and Wales)
Support After Murder and Manslaughter
The Survivors' Trust

Victim Support

Victims' Voice

Voice UK

Youth Justice Board

Action for Children

Association of Chief Police Officers

Association of Directors of Children's Services

Association of Panel Members

Association of Welsh YOT Managers

Barnado's

Care Quality Commission

Howard League for Penal Reform

INQUEST

Local Government Association

NACRO

National Society for the Prevention of Cruelty to Children

OFSTED

Prison Reform Trust

Restraint Accreditation Board

Secure Estate for Young People

Standing Committee for Youth Justice (and Association of Youth Offending Team Managers)

The Children's Commissioner

The Children's Society

The Magistrates' Association

Welsh Local Government Association

Youth Offending Teams

q1: What are your views on the proposed abolition of the AJTC?	q2Do you believe that there are any functions of the AJTC that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out above? Please state what these are and your reasons.	Please state what these are and your reasons.	q3: Do the proposals have any significant direct impact on you?	If so, please explain the impact:	qContactDetails	qContactDetails	qRepresentativeOfGroup
I feel very strongly against the government's decision to abolish the AJTC. For such a small budget, the expertise and benefits Council Members bring outweigh the cost savings and therefore I believe the huge amount of wealth of knowledge, skills and experience that council members bring will be lost. AJTC members have the right to observe deliberations government officials will not have the same right in the same way and therefore will not be able to comment on the true reflection of justice. Also AJTC is an independent body, a govt body cannot be independent to monitor the justice system.	Yes	The AJTC carry out its functions with the tribunal user in mind, how can the government prove that a body like the AJTC that cost such a small budget is not cost effective, efficient and economic to improve services for members of the public. While functions can be carried out by MoJ officials they do not have the expertise that Council Members have and will not be able to do the job in the same manner because they are not independent.	Yes				
it should close	No		No		Member of the public	15-07-11	
	No		Yes				
	No		No				
	No		No				
			No				
I must admit to being concerned about this proposal. As the role of administrative justice within the overall justice system expands and moves into ever more facets of everyday life, surely it becomes more important that it is kept under robust and independent review?	Yes	I doubt whether effective governance of the administrative justice system could ever truly take place without input from a genuinely independent overseer such as the AJTC. HMCTS will effectively be reviewing itself in this area of justice from now on and that is not good governance for what is an ever growing and ever more important area of the justice system.	No		POLICY ADVISOR	19 JULY 2011	
The role of the AJTC (quoted from their website) is to 'keep under review the administrative justice system as a whole with a view to making it accessible, fair and efficient. We seek to ensure that the relationships between the courts, tribunals, ombudsmen and alternative dispute resolution providers satisfactorily reflect the needs of users.' As a fee paid Tribunal Judge (Social Security and Child Support, and Mental Health Tribunal) of 13 years standing I feel strongly that the AJTC should not be abolished. My comments are in relation only to Tribunals and are as follows: 1. The AJTC has a proven record in keeping standards of Tribunals higher than they might otherwise be. A recent example is that the Mental Health Review tribunal- as it was- fell into a state of considerable disarray as a result of exceptionally poor management at the Department of Health. The AJTC convened an advisory group (of which I was, and remain, a member) consisting of several 'stakeholder' representatives, and over a number of years has monitored and held the MHT (as it now is) to account. Without doubt the considerable improvements	Yes	The issues are the impartiality of the oversight, and the concentration on the user of the service.	Yes	As a fee paid Tribunal Judge, I am concerned that the system operates efficiently, effectively, and economically. In the latter days when the MHRT was being administered from the Department of Health, it operated in none of these ways. The waste of money was appalling and the level of service offered was extremely poor. It was notably referred to on one occasion as a "Mickey Mouse" outfit. The Department of Health paid out damages regularly to detained patients whose Article 5 rights had been breached by delay. The AJTC (then the Council on Tribunals) was highly proactive in calling the MHRT to account. It has been very successful in doing so and there is no doubt that the system now works far more efficiently than it used to.	Tribunal Judge, fee paid	2.8.2011	

in the level of service (acknowledged at Government level apparently) have been at least in part attributable to the pressure exerted and the work put in by the AJTC. 2. To assert that the incorporation of the Tribunals Service into HMCTS □means that policy and governance arrangements are now well established' is a sloppy, illogical statement and moreover incorrect. The fact is that it is still very early days indeed in the new world of the unified Tribunals Service and the even newer world of the combined Tribunals and Courts service. It is to say the least premature to assume that the two will sit comfortably together. The two systems differ radically; the Tribunal system is known to be inquisitorial rather than adversarial, deals with predominantly (there are exceptions) administrative justice involving disputes between individuals and the state, and has always been regarded as specialist, quick, and relatively inexpensive means of resolving disputes. As Tribunals are being subsumed into the court service, this is the very time when the AJTC should be retained to ensure that none of the standards of Tribunal Service

are allowed to slip or the discreet identity of tribunals be compromised. 3. The role of the AJTC has been to ensure that administrative justice, that is, the judicial or in some cases quasi judicial resolution of issues between the individual and the state, is properly, and independently, monitored and accountable to ensure a satisfactory service for user. The consultation paper states that " A dedicated team of civil servants within the department □s Justice Policy Group are responsible for offering independent advice on strategic administrative justice policy.....is committed to working closely and proactively with other government departments to ensure a coherent and consistent approach to administrative justice policy. This includes the identification of potential improvements to the user experience". However laudable the aim, it is interesting that the user experience is the last sentence of this paragraph. The described functions in no way replicate the AJTC, for whom the 'user experience' is the primary aim. The Ministry of Justice is facing very large budget cuts; it would be very surprising if the 'dedicated team' referred to were

to have the financial wherewithal to prioritise the 'user experience' or call other Government departments to account in the way the AJTC is free to do. The Ministry of Justice is, by definition, not independent, and has no obvious interest in influencing an organisation(HMCTS) from a user perspective. 4.Proposed legal aid changes to remove eligibility for publicly funded welfare law advice or representation present a radical shift of policy compared with previous administrations, who were keen to retain publicly funded services for social welfare law. The Social Security and Child Support Tribunal, the largest in terms of appeals, is going to suffer considerable difficulties when these changes filter through, as they are likely to add to the numbers of unmeritorious appeals. The SSCT East Region has already suffered from the very poor operation of the new Administrative Support Centre in Birmingham; many appeals are now listed a year or more after the decision made: fair neither to the appellant or the DWP. With appellants losing the available advice services (few are actually represented, but many receive advice in presenting their case)

there is no doubt that the volume of appeals will put even further strain on this system. Justice delayed is justice denied and it surely cannot be long before the higher courts are asked to adjudicate on this issue. This is the sort of matter that the AJTC, in its unique position of standing outside the system, can have an effective voice in. 5. The AJTC has just published a thoughtful and rigorous paper in relation to 'first tier' decision making- which is acknowledged to leave a great deal to be desired. The AJTC is in a position to bring pressure on Government departments to improve decision making, one effect of which will be to reduce the number of appeals (with a consequent saving of public money). 6.When public bodies are made aware, sometimes painfully, that they are accountable not just to an anonymous and amorphous 'public', (whose alleged views are promulgated by a government department reflecting the policies of the government of the day) but to a focussed, independent body which is supported by but stands outside direct government- a sort of independent auditor- , they are more likely to take account of the concerns

expressed and be motivated to act upon them.

opposed to abolition	Yes	I believe AJTC functions, in keeping under review the administrative justice system as a whole with a view to making it accessible, fair and efficient, will not be properly exercised by any alternative means particularly in the face of financial restrictions and e.g. reforms proposed in legal aid and no win no fee, which appear to reduce access to justice. The relationships between the courts, tribunals, ombudsmen and alternative dispute resolution providers should reflect the needs of users using the expertise of the AJTC e.g. as demonstrated in the recent Right First Time report.	Yes	As many millions of others, I am subject, directly and indirectly, to determinations made in courts, tribunals and by ombudsmen		19/08/11	
I am concerned who will oversee tribunal and appeal panels on exclusion appeals and admissions appeals	Yes	where will the above functions go? also the exclusion appeals panels are to be replaced by review panels and who will oversee these to prevent costly judicial reviews?	Yes	I advise local authorities and lecture them on education law	Barrister and legal trainer	7th september 2011	
I am strongly opposed to abolition of the AJTC	Yes	The Council is an expert body that exercises valuable independent (i.e. external to the MoJ) scrutiny of the administrative justice system and is an important channel for consumers/users with concerns and complaints. Its functions range across the whole of the administrative justice system - courts, tribunals and ombudsmen - encouraging dialogue and collaboration across institutional boundaries in ways that cannot, in my view, be replicated within government.	No		Longstanding academic interest in the justice system		
I do not support the proposals for the abolition of the AJTC as currently framed. The impact of the provisions of the Public Bodies Bill as presently before Parliament mean that where scrutiny of Ministers is at issue, action must be done to ensure that independent scrutiny. The AJTC provides such scrutiny, particularly in respect of administrative justice policy. The present proposals provide insufficient guarantees that this will take place with the required degree of independence and transparency.	Yes	Contrary to what the Impact Assessment says, the AJTC provides scrutiny of Ministers, particularly in respect of administrative justice policy. The IA says merely that the AJTC contributes to the development of administrative justice policy. This is a significant error of fact which tends to skew the proposals. Therefore, the present proposals provide insufficient guarantees that this scrutiny will continue to take place with the required degree of independence and transparency. The proposals acknowledge that the Government will be scrutinising the Government. This is a cause of very significant concern. A particular concern is what will happen to section 24(1) of the Civil Contingencies Act 2004. Given the 2004 Act is an important piece of constitutional legislation, change to which should only happen after considerable reflection, the absence of specific proposals in the consultation document is alarming. It also means that no effective response can be given to the consultation proposals.				22 September 2011	
My concerns will be in regard to efficiency and cost effectiveness. Will they be impacted on negatively	No		No		Band 6 Team Leader (healthcare)	23/09/2011	
Better that it goes rather than front line services.	No	The whole system is in need of simplification and slimming down.	No		Trustee		I am an employer, a charity trustee and also a magistrate

MoJ can take over reporting process. There is no need to duplicate services	Yes	Possible issue with processes not being adhered to or lack of efficiency with departments. The same will apply with current structure	No		CEO	23rd Sept 2011	Cutting crime, cultivating futures... Supporting and delivering innovative partnership work. Providing work experience, skills training and employment to those disadvantaged in the labour market.
It is not clear how the current functions of the AJTC can be carried forward.	Yes	The AJTC is "arms Length" and it is not clear to me that this will be the case if it is abolished.	No		retired YJ manager	30/09/2011	
	No		No				
I have no knowledge of this and cannot thus comment.	Yes	I am saying yes because the nature of things is that when you take something away that was doing a job, that job will no longer be done - as a general rule. I would have answered 'don't know', had the option been available.	No				
PERSONALLY, I HAVE NEVER HEARD OF THE "AJTC BILL". IS THIS WHERE IT CALLS FOR WRITTEN EVIDENCE TO DO WITH LOCALISM? OBVIOUSLY IT MUST BE NO GOOD OR YOU WOULD NOT BE ABOLISHING IT. SLAVERY DAYS WERE NO GOOD. TOO MUCH UNNECESSARY PAIN AND SUFFERING TOWARDS PEOPLES THAT BELONG IN THEIR OWN LAND BUT WERE NOT ALLOWED TO REMAIN IN THEIR OWN LANDS BECAUSE OF BEING FORCED FROM THEIR COUNTRY INTO ANOTHER COUNTRY FOR SLAVE PURPOSES, ILL-TREATMENT AND NO PAY. THAT IS WHY SLAVERY WAS ABOLISHED. I HAVE NEVER HEARD OR READ THE "AJTC BILL OR PROPOSAL". FOR YOU TO BE CONSIDERING ABOLISHING IT MEANS IT MUST BE NO GOOD IN THE FIRST INSTANCE. OTHER METHODS WOULD BE (SOMETIMES UNNECESSARILY) SUBSTITUTED. TO ABOLISH MEANS TO ELIMINATE. THE BEST EXAMPLE IS 'THE SLAVERY TRADE'. IT WAS ABOLISHED BECAUSE IT WAS DEEMED AS BARBARIC, ILL-TREATMENT OF OTHERS WHO BELONG IN THEIR OWN COUNTRY THAT THEY WERE TRICKED INTO LEAVING BEHIND AND BOARDING A SLAVE-SHIP INTO THE MOST MISERABLE CIRCUMSTANCES WITH NO INCOME, THAT AFFECTED THEIR LIVES, THEIR LIVELIHOOD, THEIR HEALTH AND FUTURE AND GENERATIONS TO COME. UNDERSTAND THAT.	Yes	THE INTERNET STATES THAT: "THE 'AJTC' HAS ARGUED CONSISTENTLY THAT A FULLY-COMPREHENSIVE REVIEW OF ALL OMBUDSMAN SERVICES IN THE U.K. IS NOW REQUIRED. I HAVE HAD A PERSONAL EXPERIENCE WITH THE 'OMBUDSMAN. FOR 8 YEARS STRAIGHT I CONTRIBUTED TO A HEALTHCARE OPTION WITH LLOYDS BANK. THAT IS EIGHT YEARS @ £9.99. (£959.04P.) I GOT NOTHING BACK WHEN I EXPLAINED MY FINANCES WERE NOT WORKING OUT. I GET CHARGED FOR DENTISTRY, OPTICIANS. EVEN THE PHARMACISTS MAKE ME FEEL THAT THEY BEGRUDGE ME GETTING MY 'FREE' PRESCRIPTIONS FOR MY HIGH BLOOD-PRESSURE PRESCRIBED BY G.P. I WROTE TO THE OMBUDSMAN REGARDING THE MONIES I CONTRIBUTED TO THEIR HEALTHCARE OPTIONS AND GOT BACK A LONG-WINDED LETTER SAYING THIS AND THAT, TWO YEARS LATER I STILL DO NOT UNDERSTAND WHAT THE OMBUDSMAN IS TALKING ABOUT AND WHERE LLOYDS INVESTED MY MONIES FOR THE 8 YEARS OF CONTRIBUTING TO THEIR HEALTHCARE PLANS..	No	ONLY THE FUTURE CAN DECIDE THAT.	LEGAL EXECUTIVE SECRETARY	03 OCTOBER 2011	I WOULD LIKE TO BELIEVE THAT I REPRESENT: SUN (SUN USER NETWORK), K&C FORUM (MIND), CARERS ASSOCIATION, AND PRISONERS FAMILY AND FRIENDS SOCIETY (SWAN CENTRE).
Victim Support is neither opposed to or in support of the abolition of this body.							
	No		No				
	No		No		Member of the public	11/10/2011	N/A

23 August, 2011

Public Bodies Bill Team,
Ministry of Justice,
Post point 3.18,
102 Petty France,
London SW1H 9AJ

Dear Sirs,

Public Bodies Bill Consultation

I wish to make the following comments in response to the above consultation. These comments are made in a wholly personal capacity and do not represent the views of any institution or organisation.

Administrative Justice and Tribunals Council (Questions 1-3)

I would favour the retention of the Administrative Justice and Tribunals Council (AJTC). Although the recent changes to the tribunal system, notably the creation of the Tribunals Service, have created a position where tribunals are more co-ordinated and consistent and have a higher profile (all areas where in the past the role of the Council on Tribunals was vital), there are dangers in the new structure which the AJTC can help to avoid and new opportunities for significant progress which will be lost if it is abolished.

The key danger is that the very strength the Tribunals Service weakens the attention on anything that falls outwith its remit. Thus the position of the devolved tribunals becomes isolated and the opportunities for shared learning and developing good practice are lost. More significantly, the clearer focus on the tribunal stage risks diminished attention on the other stages of the administrative process. This is where there is a great opportunity for the AJTC to make a major contribution (and to pay its way and more). The expansion of the AJTC's remit from the narrower focus of the Council on Tribunals is crucial here. The AJTC is the only body that can link together departmental practice, the tribunals, the courts, ombudsmen and less formal complaints mechanisms, the only body with a remit that encompasses an overview of all stages of the ways in which the administration at all levels deals with individual members of the public who are unhappy with their treatment.

The best way of saving the public money spent in handling cases that go to tribunals and the courts, and in operating these bodies, is to reduce the number of cases. The same goes for the costs involved in internal complaint, grievance and redress procedures. This reduction can be achieved through improving initial decision-making, through better communication with individuals before and during procedures so that they know what to expect and what is possible and so that they do not feel aggrieved even if they do not receive the desired outcome, by providing quick, cheap and simple review and redress where this is appropriate and by considering how the various avenues of redress can best work together. This is a task which involves functions spread across many government departments and bodies and which requires the overview which can be achieved only by a body that is one step removed from the "front-line" and able to look at procedures and practice across many fields. This is where the AJTC can play a major role; largely freed now from issues arising from the tribunal reforms it can concentrate on fulfilling the wider remit it was given only a few years ago.

By improving the whole system of administrative justice from beginning to end, the AJTC can bring benefits to citizens, and to administrative and judicial bodies. Moreover, by reducing the number of resource-intensive formal redress procedures, substantial savings can be made. It should be retained, with its emphasis firmly placed on administrative justice, not tribunals.

Yours faithfully,



Prof. Colin T. Reid,
Professor of Environmental Law
University of Dundee,
Dundee DD1 4HN

c.t.reid@dundee.ac.uk

PS Sent by letter since messages to PBB. Consultation e-mail address were being returned as "undeliverable"

Public Bodies Bill Team
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Consultation: 'Public Bodies Bill: reforming the public bodies of the Ministry of Justice'

This is the response of the AJTC to the consultation paper 'Public Bodies Bill: reforming the public bodies of the Ministry of Justice' in which the MoJ is consulting on the government's proposal that the AJTC, among other bodies, be abolished. Before addressing the substantive issues in the consultation paper we would like to reiterate our disappointment, expressed at the time of the announcement in October 2010, that the AJTC was not consulted or invited to contribute to the review process before the government's decision was reached.

Our view is that the proposal to abolish the AJTC is misguided and should not be pursued for a number of reasons which I summarise below. These are enlarged upon in this letter and in the enclosed response to the specific questions posed in the consultation paper.

Summary

The AJTC's position can be summarised broadly as follows:

- as the AJTC's forthcoming report will demonstrate, administrative justice is fundamentally important to citizens. It faces major challenges and yet (as most recently suggested by the MoJ Structural Reform Plan to 2015) is not recognised as an aspect of justice which is given real priority;
- the Government appears to accept the proposition that the functions currently assigned to the AJTC are valuable and should continue to be discharged;
- the proposed abolition appears to be founded on the flawed proposition that those functions - especially the provision of the *independent* advice which is so important in an arena where citizens are challenging government - can be discharged effectively within a Government department (which is not anyway responsible for many aspects) and which is unlikely to be adequately resourced;
- the consultation paper considerably overstates the financial savings to be achieved by abolition;

- even if the functions could be discharged by Government itself, as the Government implies, the timing of the proposed abolition is itself misguided;
- importantly, the proposed abolition of AJTC does not take adequate account of the UK dimension of administrative justice and significantly complicates the resolution of current devolution questions arising in particular from the reorganisation of HMCS and the Tribunals Service.

The independence of AJTC has enabled it to interact with government at both national and local levels, the judiciary at all levels, academics and other stakeholders and to successfully influence systemic change and improvement for the benefit of both users and providers.

In short, it would be perverse to abolish a well-established, well-respected and well-connected body which - at relatively minuscule cost to the public purse – brings significant experience and expertise to the overview of administrative justice in the UK and which is in a unique position to put forward suggested improvements across the entire system of decision-making, complaints and appeals as it impacts on the daily lives of ordinary citizens.

Functions and Expertise

The primary role of the AJTC is to "keep under review and report on" the administrative justice system. The AJTC is the successor organisation to the Council on Tribunals (CoT), which operated from 1959 to 2007. CoT was formed following the Franks Report on Administrative Tribunals and Enquiries, which established the need for greater coherence, procedural uniformity and independent supervision of government tribunals. The AJTC was created by the Tribunals, Courts and Enforcement (TCE) Act 2007. This was a response to the Leggatt Review of Tribunals in 2001 and the subsequent 2004 White Paper *Transforming Public Services: Complaints, Redress and Tribunals*. The White Paper described the continuing growth and complexity of routes to complaint or appeal, most notably tribunals and ombudsmen. It highlighted the lack of strategic oversight of administrative justice which had resulted in a lack of coherence as it had developed. The 2007 Act gave a broad definition of administrative justice encompassing original decision-making processes within government departments and the full range of complaint and redress routes available from internal reconsideration of decisions through to ombudsmen and judicial review.

During the passage of the Public Bodies Bill through the House of Lords, our former Chairman Lord Newton of Braintree said:

"We are discussing not an ephemeral body that was set up on a transient whim but a council that has been a consistent part of the scene - and generally valued as part of the scene - for some 50 years."

We recognise that the future of the AJTC is a matter for Ministers and then for Parliament. Nevertheless we are deeply frustrated by the apparently arbitrary and superficial nature of the decision to abolish, notwithstanding our history and the recent thorough review of our functions.

The consultation document acknowledges the influential role that the AJTC, and the Council on Tribunals before it, have played in the administrative justice system in the past. However we reject the government's argument that the AJTC no longer represents an efficient or economic use of resources, especially as the calculations in the consultation paper considerably overstate anticipated savings.

The AJTC has real expertise and enjoys excellent relationships with all the key players across the administrative justice system. Our membership comprises senior individuals

drawn from a broad spectrum of administrative justice, who provide credibility to our role. We believe it to be essential that the *functions* of the AJTC - although not necessarily the organisation as presently constituted in every detail - should be retained within an independent and authoritative organisation.

We challenge the Government's proposition that AJTC functions can be discharged by MoJ civil servants, who would lack the required independence or breadth of understanding to fulfil our functions. The MoJ team assigned to this task is responsible for a number of other important policy areas. It is significant that this role does not feature in MoJ's published strategic plans. It is clear that an advisory Council of sixteen experienced and well-connected administrative justice experts, supported by a small team of experienced policy officers, cannot be replaced by less than two civil servants. Moreover, there is no evidence at all that government has considered how oversight of the wider administrative justice system will be maintained beyond MoJ's immediate responsibilities.

There is considerable scope - with the right approach - to increase efficiency in the system without damaging quality. Our recent work, on 'Right First Time' decision-making, on general principles for administrative justice and on proportionate dispute resolution, is all intended to promote and support a strategic approach to the serious challenges the system is facing. Our track record, the expertise and commitment of our members and our secretariat, and perhaps most importantly of all, our independence, would seem to be of crucial importance to a Government that is, of necessity, conflicted in seeking significant reform of a system of justice in which it is a party to most disputes.

Timing

The timing of the abolition proposal is surprising. The volume of appeals to tribunals has risen dramatically in the last few years. Administrative Justice actively engages more citizens than any other part of the justice system. The government is urgently seeking new approaches to dispute resolution - with new opportunities and new risks - to accommodate a substantial reduction in the justice budget. We believe the Council is uniquely well placed to help meet this challenge.

At a time of increasing economic and social uncertainty, access to justice (and public perceptions of the justice system) matter more than ever. Administrative justice essentially exists to allow citizens – often the most dispossessed - to have proper consideration of alleged mistakes and their other grievances against the machinery of government. Without an accessible and effective administrative justice system, which binds people to well-established democratic values of lawfulness and fairness, there must be increased risks of social alienation. At the very time that “Fixing the broken society” has become a top priority, many will find it very strange that the Government should wish to abolish the body which is the champion and defender of the administrative justice system.

AJTC particularly safeguards the interests of users - actual and potential. We have noted that the Government's 'Open Public Services' White Paper, published in July, announces the intention to “examine the role of elected and unelected office-holders in championing individuals' rights, ensuring availability of services and providing overview and scrutiny.”

At the launch of the White Paper, the Prime Minister emphasised the importance to be attached to promoting the user voice in relation to public services. We believe that it would be contradictory and short-sighted to abolish the AJTC, the organisation that exists for this very purpose, before the proposed examination takes place. The White Paper refers to the Government's wish to encourage existing champions, such as Which?, to speak out on consumers' behalf in relation to public services. Although there is undoubtedly considerable scope for Which? to increase its involvement with public services, I can say with authority

as its Deputy Chairman, that it has neither the expertise nor the networks across the justice system to perform the AJTC role.

Conclusion

Abolition of the AJTC would see the disappearance of a well-established, well-respected and well-connected body which has the unique overview across the entire system of decision-making, complaints and appeals as it impacts on the daily lives of ordinary citizens. There remains much to be done to improve the accessibility, fairness and efficiency of these arrangements and there are doubtless ways in which the AJTC's work could be better tuned to the present government's priorities. The Council would of course be delighted to engage in a dialogue to this end. But the waste of abolition is manifestly not the right way to achieve this wider goal.

Richard Thomas CBE
Chairman

**Consultation: 'Public Bodies Bill:
Reforming the public bodies of the Ministry of Justice'**

RESPONSE OF THE AJTC

What are your views on the proposed abolition of the AJTC?

The consultation paper states that “it is no longer an efficient or economic use of resources to have an independent advisory body to carry out functions in relation to administrative justice, tribunals and statutory inquiries.” It argues that a “a dedicated team of civil servants within the department’s Justice Policy Group are responsible for providing independent advice on strategic administrative justice policy” and that “most central government tribunals have now been brought into the Tribunals Service (now part of HMCTS)” and “effective governance arrangements are now in place.”

Of course the MoJ should have an administrative justice policy capability and we have noted the very recent appointments made to develop such a capability. However, we do not consider that there will ever be the necessary independence or capacity within the MoJ to replicate the functions of the AJTC. A policy function within government would not be able to provide “independent” advice to Ministers as the consultation paper claims. The Civil Service provides impartial advice but its role is to serve the government of the day and as such, “independent” advice from civil servants in a ministerial department is a constitutional impossibility. That is a major reason why Arms Length Bodies have come into existence historically, and also why it is not tenable to re-provide their functions within a government department in every case.

As well the freedom to tackle issues where there is inevitably a direct conflict between government and the aggrieved citizen, the independence of the AJTC (and, earlier, the CoT) has enabled it to build distinctive continuity, expertise, experience, networks, insights, reputation and influence in ways which would be neither appropriate nor practicable for a government department. It is also noteworthy that in the areas of civil and family justice, the government has recognised the continuing need for independent arms-length advisory bodies; we have seen no convincing argument why a similar need does not also continue to exist in the field of administrative justice where the need for an independent body is greater.

We will shortly publish a report setting out our analysis of the present state of the administrative justice system and outlining what we regard as the key elements of a strategic administrative justice policy. This report will challenge government to recognise the scale of unnecessary cost generated by its own actions. In particular, the report is critical of complex and badly drafted laws in some areas of administrative justice and about the extent to which poor decision-making in government departments is allowed to recur time and again without strategic action to improve it. It will also record our concerns about recent policy trends which create barriers to justice, including the reduction in legal aid, the introduction of fees and the unacceptable and growing delays in providing hearing dates for appeals. The report will emphasise:

- The need for good laws to underpin administrative justice;
- The need for public service decisions to be made right first time;
- The ongoing need for tribunal reform across the UK;
- The need for help, advice and representation in pursuing redress;
- Proportionate Dispute Resolution and wider strategic reform.

We would be pleased to share a late draft of the report with MoJ shortly. We recognise that government will not always find constructive challenge of this kind welcome, but citizens are entitled to a voice in a system that fundamentally affects their daily lives. This is not the kind of advice that civil servants are in a position to give, and neither, frankly, would most citizens consider it appropriate that they do so. Enlightened self-interest would also recognise the value of this sort of input from the governmental perspective.

The consultation paper refers to strategic administrative justice policy. The MoJ frankly does not have any such policy at the moment and its Structural Reform Plan, which determines the Departments priorities until 2015, is virtually silent on administrative justice. Despite the size of the administrative justice system and its impact on the lives of so many citizens, it retains a “Cinderella” status and attracts little political attention. Part of the difficulty is that administrative justice policy is not the responsibility of MoJ or any other single government department. In Scotland, Wales and Northern Ireland, there is an awkward mixture of devolved and reserved tribunals. The Cabinet Office retains responsibility for ombudsman policy. Significant tribunal jurisdictions concerning education and parking are operated at local government level. Planning appeals are the responsibility of the Department for Communities and Local Government. The original decision making processes which gave rise to nearly a million appeals to tribunals this year is the responsibility of several Departments, most notably DWP and the Home Office. The Department for Business, Industry and Skills is responsible for policy on workplace disputes.

The AJTC is currently the only body that has an overview of the system as a whole, able to provide independent oversight with the needs of the user in mind. It is the only body well placed to provide advice and propose improvements to government departments and others based on generally applicable principles and expertise across the system as a whole. The learning curve for a newly formed MoJ team, even for those functions currently within the MoJ portfolio, will be extremely steep. We have yet to receive any indication as to how oversight will be maintained beyond MoJ's immediate responsibilities.

We are particularly concerned that the consultation paper contains so little about the UK-wide aspects of the administrative justice system and about the reserved tribunals which sit in Scotland. It states that “the department will work with colleagues in the devolved governments to maintain a UK-wide view”. We do not believe that this is in any way an adequate arrangement to replace the role played by the AJTC's statutory Scottish and Welsh Committees. The MoJ has recently initiated three policy changes which have a significant impact in Scotland: the creation of HMCTS - an agency with an England and Wales remit but with ‘responsibility’ for tribunals in Scotland; the further devolution of tribunals to Scotland; and the unification of the courts and tribunals judiciary in England and Wales under the Lord Chief Justice, which will have implications for cross-border sitting. Policy responsibility for these initiatives appears to rest with HMCTS and not with the central MOJ policy team. We have yet to see evidence that the complex issues associated with these initiatives are properly understood. We note with growing concern that consultation papers which have been promised on these issues have been repeatedly delayed.

We also reject the assertion in the consultation paper that the MoJ or HMCTS is well placed to listen to and take account of the needs of users in making or implementing administrative justice policy. Administrative justice is concerned specifically with decisions made by the state in relation to individuals and families. The government is a party to the vast majority of the disputes coming before tribunals and has an interest in policy decisions, for example in relation to legal aid and fees, which impact on the access of individual citizens to the justice system. The difficulty this presents for the government was

alluded to by Baroness Scotland of Asthal during the passage of the Public Bodies Bill in the Lords. She said:

“The council believes that the Government bear responsibility for causing many of the appeals in the administrative justice system through poor decision-making, poor communication, delay and overly complex or incomprehensible rules. Not only will the legal aid cuts affect individual claimants, they will contribute to increasing work and delays in courts and tribunals that are already under pressure. How will such a challenge to the department that is also responsible for legal aid be made, made independently, and by whom? The value of an independent critical eye will remain present.”

We question both the estimate of the savings that will be achieved through abolition of the AJTC and the assertion that a “dedicated team” in the Ministry of Justice will take over the work of the AJTC. We believe the likely actual ‘saving’ to be made from AJTC abolition, assuming closure on 31 March 2012, will be in the order of £2 million for the financial years 2012-13 to 2014-5, and not the £4.3 million estimated by MoJ. The MoJ figure is based on an assumed saving of £1.4m for each of these three years, rounded up for inflation. The AJTC’s actual annual expenditure since 2007, including the costs of its Scottish and Welsh Committees, and projected expenditure for 2011/12 are as follows:

2007/8	2008/9	2009/10	2010/11	2011/12 (projected)
1,114,931	1,107,782	1,193,350	1,009,704	907,000

We believe that £1m, and not the £1.4 m figure quoted in the consultation paper, is closer to the actual annual gross sum that that will be saved in the next 3 financial years should the AJTC be abolished, and this saving will be reduced by the costs of closure, which MoJ estimates to be £0.6m over this period, and also by the cost of the new dedicated MoJ staff team.

The Government has not attempted to cost its “dedicated team” in MoJ. The team is responsible for ‘business as usual’ recently transferred from the Tribunals Service, providing support to the Tribunal Procedure Committee and creation of the new Property Lands and Housing Chamber of the First Tier Tribunal. The resource available to replace the work of the AJTC appears to amount to little more than one or two newly-appointed officials who have administrative justice policy as part of their wider portfolio. There is no guarantee that even this resource will be retained for any length of time as the re-structuring of the MoJ’s Justice Policy Group is still ongoing, with the risk that the staff concerned will be reallocated to work regarded as a higher priority at any time, as has already happened this year. It seems to us highly likely that this small resource will quickly be lost because administrative justice does not feature in MoJ’s published strategic plans. We respect and value the work of MoJ officials, with whom our secretariat works closely, but we do not accept that an advisory council of sixteen experienced and well-connected administrative justice experts, supported by a small team of dedicated policy officers, can easily be replaced by the full-time equivalent of less than two civil servants. We share the view of Lord Borrie, who said in the House of Lords:

“The council and, for five decades, its predecessor, the Council on Tribunals, invariably consisted of judges, practitioners, academics and others from various backgrounds ... full-time civil servants cannot replicate the breadth of knowledge and empirical experience that is so useful”

Question 2: Do you believe that there are any functions of the AJTC that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out above? Please state what these are and your reasons.

The primary function of the AJTC is independent review of the administrative justice system. We have argued above that the MoJ's proposals are not only inadequate in replacing this function but that it is a logical impossibility for them to do so given the constitutional role of civil servants.

We fully expect that the devolved governments will take steps to fill the vacuum left by the abolition of our Scottish and Welsh committees. The AJTC's power to visit tribunals, and to witness their deliberations, is of real importance to an understanding of the system from a user's perspective, and an issue has already begun to arise as how the devolved governments might confer that power in respect of reserved tribunals. As we have already indicated in answer to Q1, we think MoJ's present proposals as to how it will maintain a proper understanding of UK-wide issues in administrative justice in the absence of the AJTC are unrealistic both in principle and in practice by reference to the resource that appears likely to be made available to the administrative justice policy function.

We have already expressed our disappointment that we were not consulted before the proposed abolition was announced. The impact analysis which accompanies the consultation paper considers only 2 options: retention of the AJTC in its present form or abolition. The government has given no indication that it is willing to consider other approaches to the handling of the AJTC's functions. An amendment to the Public Bodies Bill in the House of Lords created a legislative opportunity for the functions of the Civil Justice Council and the AJTC to be merged. The Government had indicated (on page 6 of the consultation paper) that it does not intend to bring forward any order in relation to the Civil Justice Council.

Against this background we see little point in proposing other options in this consultation response but we stand ready to work constructively with MoJ in the event that it wishes to actively consider alternatives following the consultation exercise.

Question 3: Do the proposals have any significant direct impact on you?

We agree that the direct impact of the abolition of the AJTC upon its members and the staff in its secretariat is broadly as set out on the impact assessment which was published alongside the consultation paper. We also note that the expertise in administrative justice developed by our members and staff over many years will disappear, with little prospect that it can be recovered, once government proposals are fully implemented.



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**Consultation on reforms proposed in the Public Bodies Bill
Reforming the public bodies of the Ministry of Justice**

Submission by the British and Irish Ombudsman Association (BIOA)

This submission is made on behalf of the Chair and Executive Committee of the Association which was established in 1991 and includes as members all major ombudsman schemes and complaint handling bodies in the United Kingdom and Republic of Ireland. The Association's objectives include:

- encouraging, developing and safeguarding the role and title of Ombudsmen in both the public and private sectors
- setting criteria for the recognition of Ombudsman offices by the Association
- formally recognising those persons or offices who satisfy the criteria
- facilitating mutual learning and providing services to members designed to develop best practice working to raise the profile of Ombudsmen and the understanding of their work

The Association welcomes this opportunity to comment on the consultation on reforming the public bodies of the Ministry of Justice, and with particular concern to the proposed abolition of the Administrative Justice and Tribunals Council (AJTC) and its effect on the systematic view of administrative justice, including Ombudsmen.

Ombudsmen, the AJTC and the administrative justice landscape

Ombudsmen have been active participants in the AJTC since its creation, and before in its previous guise as the Council on Tribunals. The Parliamentary and Health Service Ombudsman is an ex-officio member of the main Council while the Scottish and Welsh Public Service Ombudsmen participate as ex-officio members of their respective country Committees of the AJTC. The Council has provided, for the first time, a comprehensive locus for matters of administrative justice and has allowed the various stands (the 'four pillars' to coin a phrase used by the Law Commission) of administrative justice including courts, tribunals, Ombudsmen and internal complaint handling to be seen within a broader context, and to promote complementary working and mutual learning.

Abolition of the AJTC

Clearly, with the demise of the AJTC there is a real risk that this comprehensive overview of administrative justice will be lost. The Association will be interested to learn what the proposals are to provide an alternative mechanism to deliver this task, not least because we believe that there is a compelling case for a comprehensive reconsideration of the current elements of administrative justice as the existing arrangements have evolved over time and have never been subject to the kind of comprehensive review that the AJTC was ideally placed to undertake.

The future for administrative justice oversight

Lord Justice Taylor of Holbeach, speaking for the Government in the House of Lords, said that the Ministry of Justice will take a systematic view of administrative justice across Government, and that will include Ombudsman roles. We feel that it is particularly important to have a systematic oversight, especially with the proliferation of Ombudsmen in the private sector as envisaged by work being carried out by the Department for Business, Innovation and Skills (BIS). We are currently responding to a BIS consultation on consumer empowerment and protection which advocates the expansion of consumer redress schemes, probably of the Ombudsman type.

Historically, there has been a lack of coherence and joined-up thinking about consumer redress and the AJTC could have evolved into an advisory body for the entire administrative justice sector, including private sector Ombudsmen. The National Consumer Council (now Consumer Focus) in its paper 'Lessons from ombudsmania' published in 2008 argued that:

Although it could be argued that private sector ombudsman schemes do not deliver 'administrative justice', we consider that the wide definition of this term in the Tribunals, Courts and Enforcement Act 2007 provides scope for the AJTC to take on the role we envisage. Since Ombudsmen are part of the regulatory frameworks created by statute, the relationship between consumer and ombudsmen can be said to involve an interaction between citizen and state. This suggests that industry redress mechanisms are not purely a matter of private law, but are also part of the public law system in the wider sense.

As the NCC did, the Association believes that there must be a single body within Government responsible for the strategic oversight of administrative justice, including Ombudsmen operating in both the private and public sectors. Since citizens and consumers see all Ombudsmen as one element of the wider justice system, there is a compelling argument that they should be treated as such.

Summary

In summary, the Association is very concerned that the proposal to abolish the AJTC will remove well-established arrangements for independent oversight of administrative justice at a time when this has increasing importance for citizens. We have significant reservations about whether the small team within the Ministry of Justice will have the resources and capability to provide the oversight and strategic direction required, particularly in light of the very strong case for developments needed in this area to be given a high level of priority.

We therefore seek assurances that if the proposal to abolish the AJTC is implemented. The government addresses the concerns raised and ensure that the Ministry of Justice is effective in the role envisaged.

Ian Pattison
Secretary
British and Irish Ombudsman Association

September 2011

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10 October 2011

Dear Sir/madam

Public Bodies Bill: Proposed abolition of AJTC

I write in regard of the proposal to abolish the Administrative Justice and Tribunals Council. I am a serving head teacher but write in a private capacity, though the reasons causing me to write arose in my professional duties. I consider that my public and personal reputation as a head teacher was impugned by a process quite contrary to the established principles of administrative justice in the UK, yet with no mechanism of redress through appropriate mechanisms of complaint, appeal, or due tribunal functions of evidential reckoning in the formulation of the original statements.

I oppose the abolition of this body. This is because it is an essential and necessary bulwark to the fragile state of administrative justice in the UK. Kenneth Clark MP has expressed the view that abolition may now occur since he regards that the principles of administrative justice are well embedded within the framework of the judicial procedures of the United Kingdom. I do not regard this to be the case. This is particularly with regard to the procedures of certain of the bodies established or operating under the devolved administration of Scotland after the establishment of the Scottish Parliament.

I found the recent report AJTC report *Right First Time* of June 2011 to be a groundbreaking report upholding principles of administrative justice in public services complaints handling which in their operation are close to defunct. Such innovative and groundbreaking work should not be allowed to fold. Its conclusions were affirmed by the Crerar review reports (2007) and Sinclair reports (2008) in Scotland. My own experience shows that despite these laudable moves to make apparent the woeful state of judicial process in complaints handling and the accountability processes of regulatory agencies that no mechanisms have been put in place to rectify these. Worst of all is the public pretence of the opposite, for instance by both the Scottish school inspectorate and the Scottish Public Services Ombudsman, and by the Scottish Government itself.

In regard of a case which I brought to the Scottish Public Services Ombudsman I wrote a report in January 2011 *Accountability and complaint handling of Scotland's public services' regulators and the role of the Scottish Public Services Ombudsman – The wider import of the handling and outcome of SPSO case 200800985* which I enclose. This outlines the nature of the problem. I could supply the original complaint if required. Two central points are commenting on practice without observing it, and demolishing an individual's professional standing by innuendo and pejorative remarks but providing no substantive claims, and no opportunity to test or openly respond to a charge, for a charge is never put. Right of complaint and appeal is denied. I have proof of this in mine and other cases.

The *Right First Time* report has been of immense benefit to me. It points out a huge gap in public sector accountability, one not yet remedied. My professional and public reputation has been ruined with no presentation of evidence, no convened trial or tribunal, no right of complaint and no right of appeal. There is no forum in which I may put counter factual material, material which I was denied the right to place originally. This is despite all these avenues being stated to exist, but which do not operationally function in public sector regulatory justice in Scotland. Topping this is the lack of functioning of the Scottish Public Services Ombudsman in these regards, yet whilst his office also proclaims the opposite. Indeed he makes this a major feature of his current annual report of October 2011, whilst not replying to my report of January 2011 despite its major regulatory significance for the gaps it has highlighted in the very areas he proclaims in his role as the central determining figure in regulating public policy, evidence gathering and handling in regard of complaints.

The AJTC should not be abolished. Instead its powers should be extended to cover all regulatory bodies in the public sector. These bodies have huge powers, particularly over professional reputations. It is essential that they operate in accordance with due processes of established evaluation methodologies and accepted precepts of administrative justice. They do not. It has reached the point where mere assertion, in the form of a denunciation in a written report counts as both evidence and adjudication, with no due processes occurring whatsoever, including empirical observation and evidence gathering.

For these reasons I regard the Administrative Justice and Tribunals Council as an essential body to retain, and its remit should be extended such that tribunals and their operational safeguards come to be deemed as the operational mechanisms of the adjudication functions of all regulatory, scrutiny and audit bodies. They should all be subject to the AJTC or operated by it and indeed it could replace the Ombudsman, such as here in Scotland the Scottish Public Services Ombudsman, which given its lamentable functioning would be the better body to abolish, since it has to give no account of itself or its adjudications, may and does operate in entirely arbitrary and capricious fashion and functions outwith the principles of administrative justice. The SPSO office will not even respond to correspondence, not even when pertaining to its remits and responsibilities, and legitimate enquiry as to the extent of its functions, as in the case of its remit for the Scottish school inspectorate, which I have placed in correspondence, not replied to. The SPSO has thereby abolished the independent accountability functions of Scottish public sector audit and regulation. Quite an achievement.

I note that an investigation into the functioning of ombudsman was scheduled as a forthcoming project of the AJTC which is scheduled to fold in the event of abolition. It is essential that this forthcoming investigative project of the AJTC does not fold and that it goes ahead.

For these reasons I regard that the AJTC should be retained, with indeed its role strengthened. I have indicated that it could subsume and replace the role of ombudsmen, to provide an accountability framework for regulatory justice of the public sector. I have considerable extra supporting evidence in regard of the shortfalls of administrative justice in this sector, thereby pointing to the need to strengthen the role and functions of the AJTC rather than weaken or abolish them.

Yours sincerely

A handwritten signature in black ink, reading 'Niall MacKinnon'. The signature is written in a cursive, flowing style with a large 'N' and 'M'.

Niall MacKinnon

'Clovers'
61 Chantry View Road
Guildford
Surrey GU1 3XU

20th September 2011

Dear Sir or Madam,

Consultation: 'Public Bodies Bill: reforming the public bodies of the Ministry of Justice'

Thank you for the opportunity to offer my views in respect of the above consultation exercise. I recently served the maximum two terms (eight years) as a member of the Administrative Justice and Tribunals Council and had no expectation of serving further, prior to proposals for its abolition being published. I am therefore and to that extent disinterested in the outcome of this exercise from a personal point of view. The views expressed below are my own views. I have not consulted my former colleagues on the Council, although I have read their responses to the consultation and broadly support them. My aim is to provide more background about what is at stake rather than to repeat what has already been said by the AJTC.

I joined the AJTC because as a lawyer and former public sector CEO, coming from an operational and citizen focused background. I thought then and now that there was a vital need to build a body of expertise and influence in continued support of the concept of administrative justice (AJ). AJ differs from the processing of cases through courts and tribunals to the extent that it bridges a divide between service delivery by central and local government and other agencies on the one hand and bodies charged with fair adjudication on the other. Its foundations rest both upon good decision making (and therefore service delivery) by service providers **and** fair adjudication. It relates closely to propositions of entitlement and frequently, a relationship of dependency between citizens and the state where there was and is a massive imbalance of power.

The Leggatt report in 2001 and the Act which followed only four years ago, reaffirmed the importance of procedural fairness and independence in adjudication but went further in underlining the significance of administrative justice by reforming the Council on Tribunals and giving it a wider brief. There were good reasons for this approach. Decisions about entitlement are now made by a growing range of arms length bodies and contracted agencies seeking to systematize decision making under pressure to reduce costs. The role of local government as an important decision maker in services such as education and town planning has become more recognized. There has been a proliferation of complaint handlers and ombudsmen, some statutory and some not. New techniques for early and court related dispute resolution are emerging to challenge assumptions about how citizen redress can be safely be implemented. All this is happening at a time when financial pressures are driving rapid and culturally simplistic change models in which the primary goal is to reduce back office costs by elimination of

duplication. Against this background, the need for a body to exercise some oversight of the landscape has never been greater. Current proposals, not just for abolition of the AJTC but also the continued absorption of tribunal justice into the court system seek in my view to unlearn the fragile lessons of Franks learned over more than half a century.

Franks demonstrated the need for a body, first the Council on Tribunals, now the AJTC to stand at least partially outside central and local government and provide an independent voice which could champion informality, fair treatment, actual and procedural fairness and support for users short of campaigning. A non campaigning approach preserved insight and access to government departments which might not otherwise have been forthcoming but arguably also weakened the AJTC's profile as an advocate for fair treatment. Much of its work has been "behind the scenes" and has involved the persistent application of influence and expertise at a detailed level, often based on fundamental principles which have been maintained over decades through the authority and continuity of its membership and secretariat and at very low cost.

A fundamental feature of AJ since Franks and since reinforced by Leggatt is the need not only to be fair and impartial but be seen to be fair and impartial. Advocacy for such a principle cannot be maintained by any one department of government for two reasons. The first is simply because the Ministry of Justice is only one department of government. The second is because no department of government has ever been able to persuade central government (or for that matter local government) of the need to act consistently and coherently across all its activities – in my jargon to adopt corporate standards and values, such is the competitiveness and fragmentation which is driven by national politics.

An important step along the journey to a more coherent system of AJ was the creation of the Tribunals Service, able to create some economies of scale but perhaps more importantly from the viewpoint of fairness, to begin to converge a wide variety of procedural rules from many jurisdictional areas into a more coherent and consistent approach. It was done very quickly, as was the relatively seamless transition from a variety of administrative back offices into a more coherent chamber system but there is much more to do. These changes which might be regarded as the tangible benefits of the reforms have not however been without penalty.

The introduction of judicial nomenclature and the cultural attitudes of the judiciary into which the tribunal chairs (now judges) are being absorbed will over time militate against informality and drive tribunal justice further from its linkages with both service provision and the virtuous and cost reducing cycle which comes from feedback and learning. Cost savings have also not been as rapid as hoped for, particularly in the rationalisation of the tribunal estate and with the Ministry of Justice estate more widely. An expensive mistake was also made in attempting to rationalize technology to manage the flow of cases through the system, at a cost which incidentally would have paid for the AJTC's modest expenditure levels for some years to come. From a user point of view, the promised multi purpose hearing centres never materialized after the first, although hopefully there will be opportunities to renew their introduction in future. In fairness to the Tribunals Service this was not their fault. They were simply overwhelmed by the wave of necessary cost reduction which is sweeping across the United Kingdom and elsewhere. The AJTC, seeing the progress that was being made, gritted its collective teeth and sought to remain supportive in the expectation that at some point there would be an opportunity to return to a more user focused line of best fit.

It therefore continued with its role as a critical and constructive friend throughout this period of change. It has contributed usefully to the revision of procedural rules, was invited to sit on Tribunal Service working parties and oversight bodies through its membership and chair and has acted as a channel of advice, support and constructively expressed criticism when the principles it was established to champion seemed at risk. The response until recent times from the judiciary and the departments has been largely welcoming.

Over time the continuing mismatch between an overwhelming need to save public money and the public dispatches emerging from the Ministry of Justice became increasingly difficult to reconcile. The proposal to absorb the Tribunal Service within the civil and criminal court system mentioned above was presented by the department as a further rationalisation, declared to be always intended as part of the strategic direction but never previously raised in a public consultation or shared with the AJTC, except as a fait accompli. At that point it was becoming painfully obvious that the AJTC was coming to be perceived as "the awkward squad" by the department.

From the personal perspective of someone who had previously sat on the Tribunal Service performance indicator working party, I was seeing the sometimes laborious but steady progress made in establishing success measures being abandoned in favour of starting again within a court driven service culture which would be even more focused on performance within a Ministry of Justice silo and where an emphasis on criminal and civil justice would inevitably swamp the relatively small emerging seedling that is tribunal justice. Even within the Tribunal Service, financial performance meant cost reduction on its own more than delivery of an agreed level of service at least cost. It meant speed of processing within the Tribunal Service rather than speed of processing within an end to end service which began with the time of a decision as to entitlement in another department and ended with the outcome of the last appeal – something of much greater importance to users and citizens. It meant abandoning the search for meaningful measures of customer satisfaction related to important jurisdictional areas in favour of an expensive and amorphous measure of overall performance which after some massaging, was itself abandoned at the earliest opportunity. Finding good measures of customer satisfaction is of course the last thing that the private sector would abandon in its search for profitability. The comparison is telling. Of course it will be said that the search for these measures will be resumed in the new combined mega department but one that will have moved so far from its point of origin and purpose as to be meaningless to users of tribunal justice.

If it is implied that the role of the AJTC in relation to the Tribunal Service is now said to have ended with its absorption within the civil and criminal courts delivery structure, I would say that it is only just beginning again and in terms of user and citizens' needs from a much lower base.

Who will be around to make such observations in future? The irony is that against a background of a need to make massive savings, the AJTC has also consistently and conscientiously been pointing out that there are large savings to be made if departments will only learn from wider and different experience. We have said repeatedly and constructively that getting things right first time is more than just working with a few highest volume government departments to suppress appeals when there are over 80

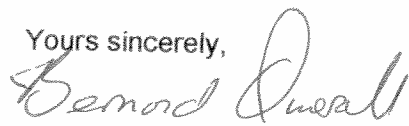
jurisdictional areas. It requires much more than a short term rush to find quick financial fixes.

In relation to the most recent magic bullet – diversion of cases through proportionate dispute resolution – something which addressed correctly has great potential for cost reduction when applied in appropriate settings, we have pointed out that lack of a strategic approach and short term diversions may have the opposite effect to that intended. Time and energy spent on the orderly encouragement of conflict resolution outside the courts so that diversion only takes place within a structured and confidence giving approach and does not deprive people of safe redress could avoid throwing the baby out with the bath water. The AJTC has also pointed out repeatedly that there is a pressing need to address **early** dispute resolution as well as experimenting with a few cost reduction exercises just outside the tribunal doors. Who will be around to provide this constructive challenge? Who will carry the lessons of experience constructively and persistently to ministers and senior civil servants who are under a perfectly legitimate cosh to deliver savings before they move on to their next project in another role or department and who are driven by this imperative, at best to undervalue the role of the AJTC and at worst to willfully misrepresent the need for continued oversight and challenge?

No doubt there are defenders of the current sense of direction who will argue that I have misunderstood what is happening and put me right if they only had the time. The cyclical loss of continuity and experience in government is not a new thing. But I am not necessarily arguing for retention of the AJTC in its current form. Its closeness to a government department and the judiciary and limited remit has in part been a cause of its weakness in challenging short term thinking and the pursuit by departments of legitimate goals (cost reduction) without attending enough to substance in service delivery and fairness. There is a case to be made for a fully independent body with a statutory right of access less conflicted in making the case for citizen fairness and redress. Such an approach is not inconsistent with a need to save money but in the meantime it is the only game in town.

Against this background the three tests adopted for making judgements when applied to the AJTC seem to me to be shallow, self serving and less intellectually honest than my eight years of working closely with a civil service department have led me to expect. Administrative justice has always been a fragile flower. There is no other body currently which does or could fulfill the functions of the AJTC or indeed provide coherence to a complex and fragmented landscape which includes departmental and local government decision making, internal review, proportionate dispute resolution, complaint handlers, ombudsman, tribunals and courts and what they can teach each other. The absorption of tribunal justice into a mega department does not mark the end of the chapter in the need for an oversight body but rather a need to relearn lessons which are being ignored in the current review. I look forward to its reinvention when that lesson is learned.

Yours sincerely,



Bernard Quoroll

Rùnaire a' Chaibineit airson Ceartais
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Rt Hon Kenneth Clarke QC MP
Lord Chancellor and Secretary of State for Justice
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3rd August 2011

Dear Ken

Thank you for your letter of 12 July 2011, addressed to the First Minister for Scotland, inviting Scottish Ministers' views on the UK Ministry of Justice's proposals for reform under the Public Bodies Bill. I am replying as these matters fall within my portfolio of Ministerial responsibilities.

I am aware of your proposal to abolish the Administrative Justice and Tribunals Council (AJTC). This will also have the effect of abolishing the AJTC's Scottish Committee, which carries out the AJTC's functions in Scotland. Scottish Ministers are content for the AJTC and its Scottish Committee to be abolished, and have been considering what we may wish to put in its place.

I note the proposals to transfer functions of the Office of the Chief Coroner to the Lord Chancellor and Lord Chief Justice. I understand that the Crown Office and Procurator Fiscal Service have been liaising with the Ministry of Justice in this regard (specifically in respect of enabling Fatal Accident Inquiries to be conducted in Scotland in respect of Scottish servicemen who die overseas). I have therefore passed your consultation to the Lord Advocate, should he wish to respond in his capacity as head of the Crown Office and Procurator Fiscal Service.

I am content to note the remainder of your plans for reform, which I do not expect to have an impact in Scotland.

Kill regd
Kenny

KENNY MACASKILL

Mencap consultation response to Ministry of Justice:

“Reforms proposed in the Public Bodies Bill”

From: David Congdon

Organisation: Mencap

Role: Head of campaigns and policy

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Date of response: 6th September 2011

About Mencap

Mencap is the charity for people with a learning disability and retains a long standing interest in the operation of the criminal justice system and the needs of victims with a learning disability.

The ‘Stand by me’ campaign was launched in June 2011 to challenge the police, the criminal justice system and the courts to end hate crime against people with a learning disability and to improve their experiences of reporting crime. The launch featured publication of the report, ‘Don’t stand by.’ This analysed the current police response to disability hate crime and included recommendations to improve.

Mencap also works on early interventions for young people with learning disabilities and communication difficulties who have a history of offending behaviour and those at risk of offending.

Through its “Death by indifference” campaign Mencap has also supported the families of people with a learning disability who have lost loved ones as a result of poor levels of care in the NHS. The inquest system has proven a difficult system to navigate for many of these families, and Mencap remains committed to securing adequate reform of the coronial system.

Mencap's chief concerns about the proposed reforms:

Mencap welcomes the opportunity offered by the Public Bodies Bill to establish an efficient and effective justice system that is better able to respond to the needs of the people who use that system.

However, some of the proposals in the Bill raise serious concerns about the ability of existing and reformed bodies to meet this challenge of delivering a modern justice system. They risk leaving people with a learning disability, their families and other groups isolated; lacking the support they need to engage with a justice system that is able to support them effectively.

The following issues are of most concern and are discussed in greater detail in section 2.

Transfer of functions of the Office of the Chief Coroner

Mencap is concerned that the transfer of powers from the Office of the Chief Coroner fails to address fundamental and long standing deficiencies in the coronial system. Several reports over the last decade have highlighted the fragmented nature of the current system. There is a wide variation across regions which results in a postcode lottery for bereaved families who rely on coroners to provide vital assurance following tragic circumstances. This variation can often leave families with long waits to establish the cause of death, causing unnecessary stress and anxiety which puts at risk their long term mental health and wellbeing.

The transfer of powers to other bodies would do little to repair a fragmented system and Mencap believes that the role of the Office of the Chief Coroner therefore has an important role to play; it offers cohesion, accountability and national leadership to help reform and resolve the current deficiencies in the coroners system.

Furthermore, the proposal to transfer some functions of the office does not pass the test based on the three criteria set out in the introduction to the consultation document. Effective functioning of the coronial system is dependent on the impartiality of the system and the need for establishing facts through independent means. Combined with the specialist nature of the work and the requirement for a senior legal figure to hold the post, it seems evident that this is a technical post and there is therefore a strong argument to reconsider the proposal to transfer functions away from the Office.

Mencap recommends that the Office of the Chief Coroner is maintained with the functions set out in Coroners and Justice Act 2009 and that the full function of the office is implemented accordingly.

Inability to respond to users' needs

Mencap is concerned that changes to the Administrative Justice and Tribunals Council (AJTC), Tribunal procedure Committee (TPC) and Courts Boards will limit the ability of the system to listen to and respond to users' needs. Both the TPC and

the AJTC have focussed “on the experience and perspective of users” seeking to understand how the justice system can be made to work to improve those experiences.

Mencap is concerned that the proposed option of encouraging remaining public bodies to listen to the user perspective will prove ineffective in either understanding or addressing concerns. Customer surveys need to be accessible to all those who use the system and Mencap is concerned that such considerations will not be possible without a body dedicated to understanding the needs of users. As such the bodies provide a specialist and technical function in analysis of customer needs which could not currently be replicated elsewhere. Mencap recommends that the bodies are maintained and that the department increases efforts to understand the needs of all users of the system through accessible consultation and feedback from.

Lack of clarity on transitional arrangements

Mencap is concerned that there are few transitional arrangements being made to manage the changes that will result from the abolition of certain bodies. This is likely to lead to a period where essential functions are effectively not being carried out.

Of particular relevance is the proposed abolition of the 19 remaining Courts Boards. These boards provide an essential advisory function in translating the diverse needs of the community into good practice. The proposals to abolish the Courts Boards is not only misguided in itself, but lacks clarity on how to establish and meet these diverse needs if the proposal were to be implemented.

Mencap recommends that a full transition plan is drawn up for all bodies that are to be abolished to ensure that there is no gap in the ability of the justice system to carry out its full range of essential functions.

Lack of long term vision

Mencap is concerned that the proposals lack a long term vision for how essential functions will be carried out if the changes are implemented. The plans for the Youth Justice Board particularly seem overly reliant on the input of a few key individuals. Whilst the expertise and experience of both John Drew and Dame Sue Street will be invaluable in steering the department through a tricky transitional period, there needs to be full consideration as to how the structures that remain will be able to meet the challenges it may face regardless of any future staff changes.

Section 2: Specific and detailed concerns

The Office of the Chief Coroner

The need for change

Several reports over the past decade have highlighted the shortcomings of the current coronial system. It is clear from these that there is not only widespread problems with delays to hearings but also significant variation in practice between regions. Mencap believes that the national, independent oversight of the Office of the Chief Coroner is essential to achieving this.

In 2006 the Constitutional Affairs Committee reported:

“The coronial system lacks national direction, with wide variations in regional practice.” Constitutional Affairs Committee (now the Justice Select Committee), 2006¹

This confirmed what had been previously identified by the fundamental review chaired by Tom Luce, which had stated clearly that:

“[The coronial system] must undergo radical change if [it is] to become fit for the purposes of a modern society and capable of meeting future challenges” Luce Review, 2003²

Mencap’s key concerns about the current coroners system:

In 2007 Mencap published its Death by indifference report which exposed the tragic consequences of deep-rooted institutional discrimination against people with a learning disability in the NHS. The report focused on the deaths of six people with a learning disability in NHS care as a result of neglect and comprehensive misunderstanding of what a learning disability is. All of the deaths highlighted in the report could have been avoided if the NHS had not failed in its duty of care and appropriate action had been taken.

As a result of these cases, Mencap was made aware as to the importance of reforming the coroners system, following failings into some of the inquests which took place into these deaths. In light of the testimonies and experiences of the parents and families of those who lost loved ones with a learning disability, Mencap

¹ Para 90, Constitutional Affairs Committee, Reform of the coroners’ system and death certification, 1 August 2006, HC 902 2005-06

² Para 1, the independent review of Coroner Services commissioned by the Home Office and Chaired by Tom Luce, Death Certification and Investigation in England, Wales and Northern Ireland, 2003

is aware that evidence of good practice in the coroners system remains sporadic and geographically inconsistent.

Case study: An example of bad practice in the coroners system:

Mark Cannon was a 30 year old man, who had a severe learning disability and epilepsy. He had very little speech, but was able to communicate with his family and sister, Jane, to whom he was very close.

Mark lived at home with his mother and stepfather and attended a day centre, five days a week. He occasionally stayed at a care home run by his local authority.

In June 2003, for reasons unknown, Mark broke his femur while staying at the care home. He was subsequently in and out of hospital. His condition continued to deteriorate and in the middle of August 2003, he had a heart attack while on the High Dependency Unit in Hospital. At the end of August 2003, his life support machine was switched off.

The family believed Mark's death was avoidable and an inquest decided that he died as a consequence of an "accidental death." Mark's family contested this view and made complaints against the local authority concerned, his GP practice and the Healthcare Commission. None of these complaints were upheld.

However, when the Parliamentary and Health Service Ombudsman (PHOS) investigated the family's complaints they were upheld. The report said: "Mr Cannon's parents said they were appalled by what happened to their son. At one point in the complaints process they said:

"All of Mark's 30 years had been a struggle for equal rights to health care, support and the services within the society he lived. We battled continuously with virtually no progress".

If Mark's family had relied entirely upon the coroners service to establish the correct details as to the cause of their son's death, they would still not be aware of the truth.

The Death by indifference report raised some key failings of the coroners system as bereaved people are being let down, made to wait lengthy periods for decisions and denied the answers they require to achieve the causes of a loved one's death.

Mencap believes that the Office of the Chief Coroner is vital in seeking to overcome these failings by ensuring that inquests are of an approved national standard and that accountability for the findings of the inquest is achieved. This will help to bring about a coroners system which meets the needs of the bereaved and learns from the past in order to prevent similar incidents in the future.

A more effective coroners system would be better placed to spread the lessons of failing practice, achieve higher standards and help prevent unnecessary deaths in

the future. Mencap believes that the retention of the Office of the Chief Coroner is a prerequisite to ensure that reform into the coroners system is achieved and recommends that the plan to transfer powers and functions away from the Office be reconsidered with the proposal being removed in its entirety from the Public Bodies Bill.

Death by indifference exposed huge shortcoming in the ability of the NHS to provide adequate support and healthcare services to people with a learning disability. Through supporting bereaved families, it also highlighted fundamental flaws in the coronial system:

- Inquests into NHS deaths often take a significant amount of time - often years - and require huge emotional effort and persistence from the bereaved.
- Reviews of fitness to practice arrangements for healthcare professionals are totally inadequate. To date, no individual health professional has been sanctioned under the fitness to practice arrangements of the respective registering bodies around poor care delivered to people with a learning disability.
- The processes in the present coroners system often fail to place sufficient emphasis on learning the lessons from previous mistakes, meaning more people with a learning disability could die as a result of neglect and poor treatment in the NHS

Opposition to the current proposal

Mencap strongly opposes the removal of the Office of the Chief Coroner and is calling for the proposal to be removed entirely from the Bill. It is widely acknowledged that the current coroners system is in need of urgent reform, with the Office of the Chief Coroner having a vital role to play in helping to achieve this aim.

The strategic oversight that the Office of the Chief Coroner would provide, the leadership it can offer and its ability to disseminate good practice means it is well placed to bring about an overall change to the system and ensure this is implemented across England and Wales. Mencap believes that it is only through a joined up and co-ordinated approach that information can be shared effectively to promote good practice and eradicate systemic failures. A reformed coroners system – with the Office of the Chief Coroner - is a prerequisite to make this happen.

It seems apparent that the proposal to transfer a limited amount of the powers of the Chief Coroner to the Lord Chief Justice and the Lord Chancellor and/or the Secretary of State for Justice, is not comparable to the retention of the Office of the Chief Coroner.

The fundamental purpose of the Chief Coroner is to undertake urgent reform of a largely fragmented and geographically inconsistent coroners system, with a body that would help to introduce more transparency and accountability. Meaningful

reform of the current system is in this way dependent upon thorough judicial oversight and national leadership. Mencap is concerned that by removing the single oversight which the system needs, any reforms will be fractured, lacking in leadership and piecemeal.

It is also widely recognised that the role of the Chief Coroner requires complete impartiality and independence in order to have full confidence from the public when determining appeals and conducting inquests. This can only be achieved through a specifically appointed individual who is proven to have no vested interests and is universally perceived as such.

Inability to respond to users' needs

The proposals to abolish the Administrative Justice and Tribunals Council (AJTC) and Courts Boards are of immediate concern. Whilst these bodies appear to perform a largely administrative function, Mencap maintains that they are essential in order to ensure the user perspective is able to influence the design and operation of the justice system.

The consultation document itself acknowledges the role of the TPC and the AJTC in particular in ensuring that people who use the system are adequately represented. Understanding the needs of users is an important and challenging function that requires a degree of expertise which is currently well represented in these bodies. People with a learning disability may require extra support to communicate, meaning standard feedback and consultation fails to acknowledge their needs. Public bodies such as the AJTC and Courts Boards have established experience in determining those needs and are better placed to translate this understanding into changes that will improve the ability of people with a learning disability to access the justice system.

As such the bodies provide a specialist and technical function in analysis of customer needs which could not currently be replicated elsewhere. Mencap recommends that the bodies are maintained and that the department increases efforts to understand the needs of all users of the system through accessible consultation and feedback from.

Lack of clarity on transitional arrangements

The programme of change proposed by the Public Bodies Bill has the potential for wide ranging and significant impact on the future of the justice system. It is therefore of considerable concern that the consultation document lacks a full consideration of the need for transitional arrangements to be made. There is a high risk that without these arrangements, essential functions of the justice system will either be

overlooked or abandoned altogether. It is therefore recommended that full arrangements are made to ensure that the justice system can maintain its full effectiveness both during and after the transitional period.

The proposals to abolish the 19m remaining Courts Boards shows a particular lack of concern about transitional arrangements. These boards provide an essential advisory function in translating the diverse needs of the community into good practice. The recommendation to abolish the Boards in favour of increased customer surveys is a key area of concern.

In addition to questions already raised about how effective such approaches are in assessing and understanding people's needs (see "inability to respond to users' needs, above), there are also concerns that such approaches will not be deliverable immediately. As such there will be an interim period during which the needs of users are not being effectively addressed and community links.

It is clear that there has been some consideration of the impact of the proposals, for example the understanding of the need to ensure representation of users on the Tribunal Procedure Committee (TPC). However, in that case it remains unclear as to how this will be achieved or the process for change. Despite vague talk of "transitional arrangements" the current proposals lack clarity on that point. Mencap recommends a full and detailed plan of transition is drawn up for all bodies that are to be abolished in consultation with user groups, existing staff and industry experts.

Lack of long term vision

Building on transitional arrangements, there is a need to ensure that the justice system is able to operate effectively well beyond this initial period of change. The aim to produce a streamlined, effective justice system necessarily requires a long term vision. The current proposals to abolish the Youth Justice Board will require careful management and the continuity offered by John Drew's presence during this time of change will no doubt be an invaluable asset. Likewise the experience of Dame Sue Street will ensure there is sufficient focus on the specific requirements of youth justice in the interim period.

However, there is a need for a long term strategy to ensure that there is not an over reliance on individuals. As part of the planning process for the future of the justice system, there should be a full consultative review of the long term priorities with relevant stakeholders to inform a complete strategy for delivering an efficient and effective justice system, fit for the future demands and challenges it will face.

APPENDIX 1 - About Mencap

Mencap is the voice of learning disability. Everything we do is about valuing and supporting people with a learning disability, and their families and carers.

We work in partnership with people with a learning disability, and all our services support people to live life as they choose. Our work includes:



Ministry of
JUSTICE

Consultation on reforms proposed in the Public Bodies Bill

Reforming the public bodies' landscape of the Ministry of Justice.

List of questions for response

We would welcome responses to the following questions set out in this consultation paper. Please feel free to answer only those in which you have a specific interest. Please email your completed form to: PBB.Consultation@justice.gsi.gov.uk, or fax to: 020 3334 6452.

Administrative Justice and Tribunals Council (AJTC)

Question 1. What are your views on the proposed abolition of the AJTC?
<p>Comments: Context</p> <p>First of all this response must be read in its context and is written on behalf of Education Appeals Support Initiation (EASI) Group which is comprised of school admission and exclusion appeal administrators and clerks from Local Authorities, (independent) clerks of own admission authorities i.e. Voluntary Aided, Trust, Foundation schools and Academies and Dioceses in England.</p> <p>School Admission Panels were introduced by the Education Act 1980, whilst Exclusion Panels came into being in the 1990's. School Admission and Exclusion Panels are Tribunals and, therefore, come under the supervision of the AJTC. However, unlike other Tribunals, they do not have a President or any formal body to represent them in their tribunals work.</p> <p>EASI Group was informed in 1999 by Local Authority and Diocese clerks who recognised the difficulties encountered in this field and the need to improve the functioning of these Tribunals.</p> <p>The CoT (former name of AJTC) produced a Special Report on School Admission & Exclusion Appeal Panels in May 2003 due to its serious concerns regarding the</p>

functioning of these panels. In the report, CoT recognised the aims of EASI Group and, in fact, has been very supportive of the Group and its aims, especially in view of the fact these appeal panels operate in a vacuum where there is no President or representative body of the panels.

It should also be noted that these panels are currently outside of the Tribunals Service. Furthermore, whilst at the moment most admission and exclusion panels consider decisions involving local authorities, in the future, when most if not all schools become Academies (as anticipated by this Government), this will no longer be the case as Academies are only answerable to the Secretary of State at the Department for Education (DfE).

Therefore, in accordance with paragraph 21 of the Introduction to the Consultation Paper, this response is representative of the interests of people substantially affected by the proposal to abolish the AJTC.

Q1 What are your views on the proposed abolition of the AJTC?

Paragraphs 1 and 2 of the Consultation document indicate that 3 tests are applied to each of the bodies and that a body would remain if it met at least one of the three tests.

Test 1: Does it perform & technical function?

The AJTC performs a technical function in that it supervises tribunals and engages in consultation responses as part of its function.

Test 2: Do its activities require political impartiality?

It is essential that the AJTC's activities require political impartiality and must not be subject to the political lead given to Government Departments, which would include the MOJ. The AJTC must have the freedom to challenge issues where there is a direct conflict between government, whether local or particularly central, and the individuals and bodies involved in the processes it oversees. In fact, the Government is a party in the majority in cases before Tribunals.

Test 3: Does it need to act independently to establish facts?

The AJTC's independence has enabled it to function effectively, and build continuity, expertise and experience. Also, in order to scrutinise the operation of Tribunals, the body that does so needs to be Independent (or at the very least arms length) of any

Government department, including its own, in order to establish the relevant facts regarding how Tribunals are performing.

Conclusion

Therefore, the AJTC as a body meets all three tests and, therefore, on this basis must remain in its current form and not be merged or functions transferred elsewhere.

Unlike several of the other bodies referred to in the consultation paper it cannot be said that the AJTC's functions are no longer required or that it has fulfilled its purpose.

Quite the opposite in fact!

The Council, as a body, has existed for over 50 years which in itself surely demonstrates its functions are essential. In 2007 the Council's remit was broadened when it became the AJTC, so to either abolish it or transfer its functions now would seem to be quite irrational.

If its functions are transferred to the MOJ, the MOJ cannot possibly be adequately resourced to take on all of the AJTC's functions.

Whilst many Tribunals are now part of HMCTS, there are still many that have been left outside of that body and still require the supervision and support of the AJTC, including school admission and exclusion panels.

Therefore, whilst paragraph 8 of the Consultation paper states the Government considers the AJTCs oversight function duplicates activity that can take place elsewhere, that may be true of the Tribunals in it HMCTS; however, it is most certainly not the case for those left outside that service!

Likewise, because of the number of tribunals still outside HMCTS it is not true that the AJTC's oversight role in relation to Tribunals is no longer required as stated in paragraph 34.

Whilst, almost all Tribunal jurisdictions within HMCTS may have user groups to discuss issues of concern, the same cannot be said of all those outside HMCTS, including admission and exclusion panels. Therefore, with the very high number of cases which the school admission appeal panels deal with it is essential the AJTC is not abolished.

Equally, if the AJTC continues in its overview function for all Tribunals, including those in HMCTS, it ensures a continued efficient and effective service in this respect.

Question 2. Do you believe that there are any functions of the AJTC that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out in the consultation paper? Please state what these are and your reasons.

Comments: In the context of School Admission and Exclusion Appeal Panels, there are two specific functions that will not be adequately covered by transferring them to a very small team of civil servants in the MOJ's Justice Policy Group. They are:

First and most importantly the Council's supervisory role and, secondly, its legal duty to respond to consultations carried out by the Department for Education (as named currently).

Supervisory Role: The Council's members visit a number of hearings every year in order to ensure the panels are conducting the admission and exclusion appeal hearings properly and in accordance with the relevant central Government Code/Guidance.

On the basis that there are 150 Local Authorities (LA) and several hundred own admission authority schools (with more to come as LA schools become Academies), there will be a significant increase in the number of supervisory visits that will be necessary.

Both the former CoT & current AJTC have been extremely concerned about the way in which many of these panels operate, which is why the Council has supported the work of EASI Group.

The Government anticipates that by the end of its current term the majority of schools will have converted to Academy status and, therefore, be responsible for running their own appeal panels.

Currently the Local Government Ombudsman (LGO) investigates parental complaints regarding the admission and exclusion appeals process for schools, other than Academies. (Academies complaints are overseen by the DfE Secretary of State)

It is notable that the majority of the LGO's reports of maladministration involve schools that are their own admission authority, as their panels are not always fully aware of the need to follow the Codes or, if they are, they do not appear to consider they should do so. Therefore, when the majority of schools become responsible for their own appeal process, the supervisory function of the Council will be even more necessary!

Consequently the small team of civil servants in MOJ cannot possibly be adequately resourced to respond to the significant increase in the number of panels that will need to be inspected and supervised.

Consultation

While it is noted, in paragraph 34 of the Consultation document, that the Administrative Justice team within the MOJ is committed to working closely and proactively with other Government departments to ensure a coherent and consistent approach to administrative justice policy, including the identification of potential improvements to the user experience, that team cannot possibly and will not have the depth of experience and knowledge which the AJTC has gained over the last 30 years in respect of the education legislation i.e. since 1980.

Indeed, if it is the intention that the MOJ team's task in this respect will not include comments on the specific area of law on admissions and exclusions, again there will be a significant reduction in the function currently carried out by the AJTC. This will result in a detrimental impact on both the work of the panels and, ultimately, the parents/guardians and children involved in the school admissions and exclusions processes.

While school exclusion appeal panels hear approximately 1000 cases a year, school admission panels alone heard 60,855 cases in 2009/10 and 63,715 in 2008/09, although the number of admission appeal hearings is slightly lower than the number of cases as they are grouped together when possible. Therefore, these panels deal with a very large number of citizens regarding their children in what is a high profile area of work.

Question 3. Do the proposals have any significant direct impact on you (if so, please explain the impact)?

Comments: The majority of admission authorities, whether schools or LAs, appoint their own panels.

Therefore, the school admission and exclusion appeals panel function in itself is not sufficiently independent from the admission authorities whose decisions are scrutinised by the panel.

Amongst EASI Group members, there have been many occasions when the admission authority has applied inappropriate pressure on the administrators, clerks and panel members involved in the appeals process.

For example, when a Local Authority was not happy with a Panel's decision in one instance a different decision letter was sent out while, in another, the panel members were not allowed to sit in subsequent appeal hearings. In both cases the LGO and High Court respectively were critical of the admission authorities.

In these circumstances the majority of Local Authorities would refer such matters to the AJTC as the supervisory body of appeal panels on the basis that the panels are independent and answerable only to the AJTC as its supervisory body and not the admission authority.

Therefore, there would be a significant direct impact on the operation of these panels without both the scrutiny and safety net of the AJTC, which has greater capacity than the small team of civil servants to deal with just this one tribunal.

Question 4. **What are your views on the proposed abolition of the Courts Boards?**

Comments:

Question 5. **Do you believe that there are any functions of the Courts Boards that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out in the consultation paper? Please state what these are and your reasons.**

Comments:

Question 6. **In your opinion, how can local courts and tribunals reinforce the link between them and the local community?**

Comments:

Question 7. **Do the proposals have any significant direct impact on you (if so, please explain the impact)?**

Comments:

Crown Court Rule Committee

Question 8. **What are your views about the proposal to abolish the Crown Court Rule Committee?**

Comments:

Question 9. **Do you consider that the proposals to abolish the Crown Court Rule Committee and transfer functions to the Lord Chief Justice and the other rule committees will ensure that the Crown Court Rule Committee's existing remit can be taken forward? Please explain your reasons if not.**

Comments:

Her Majesty's Inspectorate of Court Administration (HMICA)

Question 10. **What are your views on the proposed abolition of HMICA?**

Comments:

Question 11. **Do you believe that there are any functions of HMICA that will not be adequately covered following the proposed abolition and suggested future handling as set out in the consultation paper? Please state what these are and your reasons?**

Comments:

Magistrates' Courts Rule Committee (MCRC)

Question 12. **What are your views about the proposal to abolish the MCRC?**

Comments:

Question 13. **Do you consider that the proposals to abolish the MCRC and transfer its consultative functions to the other rule committees will ensure that the MCRC's existing remit can be taken forward? Please explain your reasons if not.**

Comments:

Office of the Chief Coroner

Question 14. **What are your views on the proposed transfer of functions of the Chief Coroner to the Lord Chief Justice and the Lord Chancellor: in principle and/or in relation to the particular functions detailed in Annex A?**

Comments:

Question 15. **What are your views on the proposed Ministerial Board and supporting Bereaved Organisations Committee?**

Comments:

Question 16. **Are there any functions of the Chief Coroner not adequately covered by the proposals set out in the consultation paper, in your opinion? Please explain your reasons.**

Comments:

Public Guardian Board (PGB)

Question 17. **What are your views on the proposed abolition of the PGB?**

Comments:

Question 18. **Do you believe that there are any functions of the PGB that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out in the consultation paper? Please state what these are and your reasons.**

Comments:

The National Archives

Question 19. **Do you agree that it is now appropriate to reflect in legislative terms the administrative changes already completed, to ensure the appropriate consolidation of functions?**

Comments:

Victims' Advisory Panel (VAP)

Question 20. **What are your views on the proposed abolition of the VAP?**

Comments:

Question 21. **Do you believe that there are any functions of the VAP that cannot be adequately addressed by the Commissioner for Victims and Witnesses? Please state what these are and your reasons.**

Comments:

Question 22. **Do the proposals have any significant direct impact on you (if so, please explain the impact)?**

Comments:

Youth Justice Board (YJB)

Question 23. **What are your views on the proposed abolition of the YJB?**

Comments:

Question 24. **Do you believe that there are any functions of the YJB that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out in the consultation paper? Please state what these are and your reasons.**

Comments:

Question 25. **How do you believe that the Government can best ensure effective governance of youth justice in the future?**

Comments:

Please complete the section overleaf to tell us more about you.

About you

Please use this section to tell us about yourself

Full name	Mrs Sheila Sturgeon
Job title or capacity in which you are responding (e.g. member of the public etc.)	Education Appeals Officer (Oxfordshire) For and on behalf of Education Appeals Support Initiative (EASI) Group
Date	5 October 2011
Company name/organisation (if applicable):	EASI Group
Address	c/o County Hall, New Road, Oxford
	New Road, Oxford
Postcode	OX1 1ND
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> YES (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

- Providing high-quality, flexible services that allow people to live as independently as possible in a place they choose
- Providing advice through our helplines and websites
- Campaigning for the changes that people with a learning disability want

Mencap is currently campaigning on improving the criminal justice system to end disability hate crime, making it more responsive to the needs of victims and supporting people with a learning disability who are themselves offenders or at risk of offending via the 'Raising your game' project.

About Learning Disability

There are many different types of learning disability and most develop before a baby is born, during birth or because of a serious illness in early childhood. A learning disability is lifelong and usually has a significant impact on a person's life; it is not mental illness or dyslexia.

People with a learning disability find it harder than others to learn, understand and communicate. People with profound and multiple learning disabilities (PMLD) need full-time help with every aspect of their lives - including eating, drinking, washing, dressing and toileting.

There are 1.5 million people with a learning disability in the UK. Like all of us, they are individuals who want different things in life and need different levels of support.

Mencap's criminal justice work

Mencap are working with other organisations to help people understand more about hate crime and how to stop it. We are also working with the police and the courts to make sure real action is taken if people experience hate crime. Mencap first raised this issue in its 'Living in fear' report (2000), showing that 9 in 10 people with a learning disability had experienced abuse, harassment or other hate crimes.

Stand by me – to tackle disability hate crime

Recent cases have helped to show how much needs to change to make sure the police and the courts give equal treatment for disabled people. Mencap launched its 'Stand by me' campaign in June 2011 to tackle hate crime against people with a learning disability. 'Stand by me' will challenge the police, the criminal justice system and the courts to end hate crime against people with a learning disability within a generation. The campaign also calls on the public to 'stand by' people with a learning disability helping them to integrate into communities in which they feel safe, free from fear and able to live fulfilling, independent lives.

'Raising your game' – working with young offenders with a learning disability

'Raising your game' is a Mencap delivered project for young people aged between 14 and 25 with a learning disability or communication difficulty. Some have been in trouble with the police and some are at risk of getting in trouble.

Young people with a learning disability or communication difficulty are at a higher risk of offending because they are not getting the right support in life. With 'Raising your game' we are helping them to get their voices heard by big organisations. We want all young people with a learning disability to get the support they need.

'Raising your game' is funded by the Big Lottery Fund and will be delivered by Mencap in partnership with I CAN and Nacro. The project launched in 2009 with six pilots in Avon and Somerset, East Kent, Greater Manchester, Hertfordshire, Leeds and the West Midlands.

For more information, please contact:

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The Honourable Lady Smith

Parliament House
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Edinburgh, EH1 1RQ

Public Bodies Bill Team
Ministry of Justice
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5 October 2011

Dear Sirs,

Ministry of Justice Consultation – ‘Public Bodies Bill: reforming the public Bodies of the Ministry of Justice’

I am writing to you as Chair of the Scottish Tribunals Forum (‘STF’) which has been made aware of the responses to the above consultation paper that you have received from the AJTC and from its Scottish Committee.

It may be of assistance to you in your deliberations to know that the STF has been kept fully informed of the past and current work of the Scottish Committee of the AJTC and would be sorry to see its abolition. The invariable experience of the STF has been that its work has been extremely well performed and, being the work of a wholly independent body, has been of particular value to the operation of tribunals in Scotland. The STF understands that the committee has ongoing projects including quality assurance and a review of appeal processes, both of which are plainly important matters.

As you will know, whilst Scotland is able to make its own arrangements so far as the devolved tribunals are concerned, the position at present remains that the devolution of the administration or judicial leadership of those tribunals operating in Scotland which deal with areas of reserved law has not, as yet, taken place. The STF would welcome any decision which retains the *status quo*, at least until that devolution occurs.

Yours sincerely

The Honourable Lady Smith

Anne Galbraith CBE
Chairman

Valuation Tribunal Service
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Tel: 0207 426 3900

Consultation: “Public Bodies Bill: Reforming the public bodies of the Ministry of Justice”

As Chairman of the Valuation Tribunal Service, I am responding on behalf of my Board to the Ministry of Justice consultation on reforms proposed in the Public Bodies Bill with regard to the Administrative Justice and Tribunals Council. I should also state that I am a former member of the predecessor body, the Council on Tribunals.

My Board has considered the consultation document, although Professor Zellick, President of the Valuation Tribunal for England, was not able to be present when this matter was discussed and does not wish to express a view at this time. The Board would respond to the questions posed as follows:

1. What are your views on the proposed abolition of the AJTC?

My Board believes that the rationale for abolition of the AJTC is based on too narrow a view of its remit. Much emphasis in the consultation document is placed on the fact that the unified Tribunals Service involves the majority of central government tribunals, but this does not take account of those tribunals which currently lie outside the unified Tribunals Service (our own Valuation Tribunal for England is presently in this category), some of which are likely to remain outside – for example, school admission and exclusion appeals.

Moreover, the current remit of the AJTC is to keep the administrative justice system under review. This remit is wider than simply overseeing those tribunals which now form part of the unified Tribunals Service. The Council has a long record of championing the needs of users. It has tackled issues as diverse as representation, availability of advice and support, simplification of forms and leaflets, minimising delays, opposing fees in appropriate cases, critiquing the standards of initial decision making, appropriateness of venues and support arrangements, signing and interpretation, and the creation of model rules of procedure. It has exercised its influence in many cases by having a holistic understanding of practice across the world of administrative justice, and being able to encourage struggling organisations or systems to seek support from

those who have developed good practice. The loss of this user focus and sharing of good practice would be a significant disadvantage if the AJTC were to be abolished.

Another significant feature of the work of the AJTC is their track record in drawing together the leading players in the administrative justice sphere, and providing a supporting networking opportunity. This is enhanced by their annual conference which allows a forum for debate and exchange of thinking amongst some of the leading judiciary, academics and administrators in the tribunal and administrative justice field. The Council itself has a wide range of skills and experience accumulated amongst its members, and its relationship with the Scottish and Welsh committees has proved to be helpful in clarifying some of the more obscure matters in relation to tribunals that have been thrown up by devolution. The more recently developed international links forged by AJTC have also provided some useful experience and thinking on developments in administrative justice. The recognised expertise of members of AJTC is also regularly drawn on by specific tribunal systems, to add breadth to the deliberations of user groups. It is almost impossible to imagine some of these activities being delivered by civil servants with a policy remit.

AJTC and its predecessor body have existed continuously for more than 50 years, accumulating during that time an extensive archive and corporate memory on the development of tribunals. This is a very significant resource, and it is difficult to see where the repository for this archive could safely and accessibly be kept and maintained.

The administrative justice landscape is one which has grown exponentially in recent years and it encompasses a range of systems of redress far wider than merely hearings in tribunals. Significant work has been undertaken to evaluate the scope for systems of alternative dispute resolution and there has been a strong desire to see how and where Ombudsmen and Inquiries should sit within this landscape. With increasing impact of government in the lives of citizens, it is very likely that the landscape will continue to change at a faster pace than the ordinary courts, and it is therefore likely that a different system of overview will be appropriate.

2. Functions of AJTC not adequately covered by current proposals

Given our response to question 1, I would simply set out the following items where we consider that the proposals as outlined would not provide adequate coverage:

- Focus on user perspective
- Appropriate degree of independence in advice giving to Ministers
- Resource and archive on tribunals and administrative justice
- Holistic view of systems of redress in administrative justice
- Forum for dissemination of good practice
- Network of expertise in administrative justice

3. Impact on the Valuation Tribunal Service

This would consist of the loss of the resource which currently offers the support outlined in answer to Q1.

In summary, my Board considers that elements of the current role of the AJTC continue to be useful and are best performed by a body at arms length from government departments.

Yours sincerely

Anne Galbraith

Anne Galbraith CBE
Chairman
Valuation Tribunal Service

Consultation on reforms proposed in the Public Bodies Bill

Reforming the public bodies of the Ministry of Justice

Ministry of Justice Consultation 2011

**Response of
The Trading Standards Institute**

October 2011

About The Trading Standards Institute

The Trading Standards Institute is the UK national professional body for the trading standards community working in both the private and public sectors.

Founded in 1881, TSI has a long and proud history of ensuring that the views of our 3,200 Members are represented at the highest level of government, both nationally and internationally.

We campaign on behalf of our Members to obtain a better deal for both consumers and businesses.

TSI is also a forward-looking social enterprise delivering services and solutions to public, private and third sector organisations in the UK and in wider Europe.

We provide accredited courses on regulations and enforcement which deliver consistent curriculum, content, knowledge outcomes and evaluation procedures, with the flexibility to meet local authority, business and operational needs.

This response has been composed by TSI Lead Officer for Civil Law David Sanders. If you require clarification on any of the points raised in the response, please do not hesitate to contact David at email locivillaw@tsi.org.uk or by telephone at 0845 608 9492.

TSI does not regard this response to be confidential and is happy for it to be published.

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Consultation on reforms proposed in the Public Bodies Bill – reforming the public bodies of the Ministry of Justice

The Trading Standards Institute would like to confine its comments on this consultation to the proposed abolition of the Administrative Justice and Tribunals Council.

The Administrative Justice and Tribunals Council seeks to ensure that parts of the public sector are accessible, fair, and efficient. It is that most vital part of the public sector where the public can challenge the use of administrative power. As such it supports standards in public life and thus fulfills, the Trading Standards Institute believes, a vital function at this time of widespread change in the public sector.

The functions of the Administrative Justice and Tribunals Council include:

- Keeping the administrative justice system under review;
- Considering ways to make the system accessible fair and efficient;
- Advising ministers on the development of the system;
- Referring proposals for change to those persons; and
- Making proposals for change in the system.

It seeks to review and improve decision-making, complaint-handling and appeals from the particular perspective of individuals as users / consumers; it also seeks to ensure that the relationships between the courts, tribunals, ombudsmen, and alternative dispute resolution providers satisfactorily reflect the needs of users.

Its membership consists of the Parliamentary Commissioner for Administration and between 10 and 15 representatives of Government; Welsh Government, Scottish Government, and the UK Government through nomination by the Lord Chancellor.

The case for abolition is that its functions are those of Government. Yet its members are convened by a paid secretariat. As such its functions are formalized – they cannot be spread diaphanously across Government.

The Public Bodies Bill seeks to link the Civil Justice Council with the AJTC The CJC is an Advisory Public Body which was established under the Civil Procedure Act 1997 with responsibility for overseeing and co-ordinating the modernisation of the civil justice system. The Trading Standards Institute welcomes the news that the Government does not now seek to combine these two bodies, but we do not believe that abolition of the AJTC is a valid option.

In summary, the Trading Standards Institute believes that, during a period of rapid change to the public sector and to the bodies within that sector, the interests of the public need to be safeguarded. The administrative justice system will come under pressure at such a time and the abolition of the Administrative Justice and Tribunals Council would not be in the interests of the public.

Consumer Focus Scotland's response to the Ministry of Justice's consultation on reforms proposed in the Public Bodies Bill

October 2011

About Consumer Focus Scotland

Consumer Focus Scotland is the independent consumer champion for Scotland. We are rooted in over 30 years of work promoting the interests of consumers, particularly those who experience disadvantage in society.

Part of Consumer Focus, our structure reflects the devolved nature of the UK. Consumer Focus Scotland works on issues that affect consumers in Scotland, while at the same time feeding into and drawing on work done at a GB, UK and European level.

We work to secure a fair deal for consumers in different aspects of their lives by promoting fairer markets, greater value for money, improved customer service and more responsive public services. We represent consumers of all kinds: tenants, householders, patients, parents, energy users, solicitors' clients, postal service users or shoppers.

We aim to influence change and shape policy to reflect the needs of consumers. We do this in an informed way based on the evidence we gather through research and our unique knowledge of consumer issues.

Reforms proposed in the Public Bodies Bill: reforming the public bodies of the Ministry of Justice

Consumer Focus Scotland Response to the consultation

Introduction

1. Consumer Focus Scotland welcomes the opportunity to respond to the Ministry of Justice's consultation on reforms proposed in the Public Bodies Bill. Consumer Focus Scotland is the independent consumer champion for Scotland. We work on issues that affect consumers in Scotland, while at the same time feeding into and drawing on work done at a GB, UK and European level. As part of a UK body, we focus also on ensuring that consumers in Scotland are treated as fairly as those elsewhere in the UK.
2. Our comments in relation to this consultation are limited to those reforms which will impact directly on consumers in Scotland. Therefore, we are only addressing the questions on the planned abolition of the Administrative Justice and Tribunals Council and its Scottish Committee.
3. Consumer Focus Scotland, and previously the Scottish Consumer Council, one of Consumer Focus Scotland's predecessor bodies, have had a longstanding interest in the administrative justice system, from the perspective of the user. We provided policy support to, and published the two reports of, the Administrative Justice Steering Group (AJSG), chaired by Lord Philip. In addition, the then Chair of the Scottish Consumer Council, Douglas Sinclair, chaired the Fit-for-Purpose Complaints System Action Group, set up by the Scottish Government to consider how to improve complaints-handling systems within public services in Scotland. We therefore have a particular interest in the proposal to abolish the Administrative Justice and Tribunals Council.

Question 1: What are your views on the planned abolition of the Administrative Justice and Tribunals Council?

4. We have significant concerns about the impact that abolishing the Administrative Justice and Tribunals Council (AJTC) and its Scottish Committee (SCAJTC) could have on users of the administrative justice system in Scotland.
5. The administrative justice system is a crucial element of the civil justice system in Scotland. Many more people make use of the administrative justice system in Scotland than the court system¹ and it therefore acts as an important means for consumers to resolve their disputes.

¹ There were 126,304 cases initiated in the sheriff courts in 2008-09. Source: Scottish Government (2010) Statistical Bulletin: Crime and Justice Series. Civil Judicial Statistics Scotland, 2008-09 and

6. It appears from the consultation paper that the decision to abolish the AJTC has been made primarily with regards to the tribunal context in England and Wales, rather than looking at the future functions of its devolved committees. In particular, we would note that one of the reasons progressed within the paper for why the AJTC's oversight role is no longer required is that most central government tribunals have been brought into the Tribunals Service (now part of Her Majesty's Courts and Tribunals Service).
7. However, we have two concerns about this. Firstly, the administrative justice system is wider than just tribunals, encompassing public sector complaints processes and ombudsmen schemes. Secondly, it is important to note that the tribunal context in Scotland is very different from that in England and Wales. In 2008, the Administrative Justice Steering Group (AJSG)² published the first of its two reports on the administrative justice framework in Scotland.³ This report found significant problems with the arrangements for tribunals in Scotland, including that the tribunals system is extremely complex and fragmented, and that there are significant differences in how different tribunals are administered and run, including how the tribunal members are appointed and trained. The AJSG's assessment was that the current system of tribunals in Scotland failed to meet the Leggatt principles of
 - independent and impartial processes;
 - an independent and skilled judiciary;
 - a coherent system.
8. This was felt to potentially disadvantage tribunal users in Scotland. The overall finding of the second report of the Administrative Justice Steering Group was that the administrative justice system in Scotland does not sufficiently meet the needs of its users.⁴

2009-10, Edinburgh: Scottish Government. In 2008-09, examples of cases heard by tribunals include: 22,351 cases received by Employment Tribunals in Scotland; 42,866 hearings at the Children's Hearings and 7,513 cases received by the Valuation Appeal Committees. Source: Administrative Justice and Tribunals Council statistics, available at <http://www.ajtc.gov.uk/stats/index.htm>. The Administrative Justice System is defined broadly by the Administrative Justice Steering Group and includes complaints systems used to resolve disputes and grievances. In 2008-09, there were 10,967 complaints received by NHS organisations in Scotland. Source: Information Services Division Scotland, available at <http://www.isdscotland.org/isd/4424.html>. The Scottish Public Services Ombudsman received 2875 complaints in 2008-09. Source: Scottish Public Service Ombudsman Annual Report 2008-09 available at <http://www.isdscotland.org/isd/4424.html>.

² The Administrative Justice Steering Group was established by the Scottish Public Services Ombudsman, in conjunction with the Scottish Committee of the Council on Tribunals (now SCAJTC) with the support of the then Scottish Executive, under the chairmanship of the Right Honourable Lord Philip. Consumer Focus Scotland (and previously the Scottish Consumer Council, one of Consumer Focus Scotland's predecessor bodies) provided policy and secretariat support to this group.

³ Scottish Consumer Council (2008) *Options for the Future Administration and Supervision of Tribunals in Scotland: A report by the Administrative Justice Steering Group*, Glasgow: Scottish Consumer Council. The second report of the AJSG was published in 2009: Consumer Focus Scotland (2009) *Administrative Justice in Scotland – The Way Forward: The final report of the Administrative Justice Steering Group*, Glasgow: Consumer Focus Scotland

⁴ Consumer Focus Scotland (2009) *Administrative Justice in Scotland – The Way Forward: The final report of the Administrative Justice Steering Group*, Glasgow: Consumer Focus Scotland

9. There have been a number of developments in administrative justice following the publication of the reports of the AJSG. In December 2010 the Scottish Government established the Scottish Tribunals Service, a unit based within the Scottish Government, which has brought together administrative support for six of Scotland's tribunals. The Scottish Government's programme for 2011-12 outlines an intention to further integrate tribunals into a single, more efficient and user-focused Scottish Tribunals Service.⁵ In addition, the Scottish Government has begun discussions with the UK Government about devolving responsibility for all tribunals operating in Scotland to Scottish Ministers.
10. Although we welcomed the establishment of the Scottish Tribunals Service as a step in the right direction, it will be vital to ensure in the longer term that the administration and operation of tribunals is fully independent of government, as recommended by the AJSG, to ensure that users can have complete confidence in the system. The need for further reform of the Scottish Tribunals Service, together with the complex issues raised by any moves towards further devolution of tribunals to Scottish Ministers, emphasises the continued need in Scotland for an organisation to keep the administrative justice system under review, offer advice and expertise to government, and in particular to ensure that the user voice is appropriately represented. This will be particularly important throughout any transitional periods during which the UK Government retains responsibility for some or all reserved tribunals operating in Scotland.
11. It is therefore imperative that provision is made to ensure the functions of the SCATC, particularly in relation to helping make administrative justice and tribunals increasingly accessible, fair and effective by ensuring that the needs of users are central,⁶ are transferred to another organisation. This is particularly important given that there is currently uncertainty about the future of another body which has represented the consumer interest in administrative justice. As well as the planned abolition of the AJTC and its Scottish Committee, Consumer Focus Scotland is due to close in 2013 and its functions either transferred to Citizens Advice Scotland or an alternative body, depending on decisions taken by the UK and Scottish Governments.
12. In its recently published consultation on proposals to create a new Scottish Civil Justice Council,⁷ the Scottish Government has suggested that the Scottish Civil Justice Council's remit should include the SCAJTC's functions of examining the current administrative justice system, highlighting any issues and making recommendations to Scottish Ministers. We are still to consider these proposals in detail, and indeed it remains to be seen whether they will be progressed. We would emphasise, however, that it is critical that this element of the SCAJTC's work is done, and that whatever organisation is given this responsibility, that it has sufficient resources,

⁵ Scottish Government (2011) *Renewing Scotland: The Government's Programme for Scotland 2011-12*, Edinburgh: Scottish Government

⁶ Administrative Justice and Tribunals Council Framework Document, Ministry of Justice, November 2007

⁷ Scottish Government (2011) *Consultation on the creation of a Scottish Civil Justice Council*, Edinburgh: Scottish Government

powers, skills and knowledge in place to ensure positive outcomes are achieved for consumers of the administrative justice system in Scotland.

13. In order to ensure it is properly able to represent the interests of users, it will be essential that any such organisation should not only involve significant user and lay representation on its board, but that other means are found of engaging directly with users, such as undertaking research or holding discussion events. We do not think it will be possible to create a truly user-focused administrative justice system unless a firm commitment is made to engage directly with users to ensure that the reforms adequately address their needs.
14. We urge the UK Government to work together with the Scottish Government to find an appropriate solution to ensure that the interests of users of administrative justice in Scotland are appropriately represented and protected, particularly as further reforms are undertaken in this area. In particular, it is imperative that the UK Government does not abolish the SCAJTC until the Scottish Government can put in place a suitable alternative.

Question 2: Do you believe that there are any functions of the AJTC that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out in the consultation paper? Please state what these are and your reasons?

15. There is very little in the consultation about what will happen to the functions of the Scottish Committee of the Administrative Justice and Tribunals Council. The consultation simply states that 'the Scottish and Welsh committees of the AJTC will continue until the AJTC is abolished. It will be for the devolved administrations in Scotland and Wales to make whatever arrangements they are able to suit their circumstances, after the AJTC has been wound up.' As noted above, the Scottish Government is currently consulting on whether some of the SCAJTC's functions should be included within the Scottish Civil Justice Council's remit, once this organisation is established.⁸ As stated above, we believe the expected reforms to the administrative justice system in Scotland will require the SCAJTC's functions to be retained and it is essential that the UK and Scottish Governments work together to ensure appropriate arrangements are in place.
16. If suitable alternatives are not put in place, we believe the abolition of the SCAJTC will result in the needs of users of administrative justice being insufficiently represented. Taking account of the interests of users of administrative justice in Scotland will be even more important in the coming years as significant changes are made to the landscape of tribunals in Scotland.
17. It is, of course, also important to note that the administrative justice system is wider than simply tribunals, and broadly includes:

⁸ The Scottish Government has committed to introducing a Legal Aid and Civil Justice Council Bill during the 2011-12 legislative programme, see Scottish Government (2011) *Renewing Scotland: The Government's Programme for Scotland 2011-12*, Edinburgh: Scottish Government

- initial decision-making by public bodies affecting citizens' rights and interests, including the substantive rules under which decisions are made and the procedures followed in making decisions;
 - systems for resolving disputes relating to such decisions and for considering citizens' grievances.⁹
18. The problems with the administrative justice system in Scotland identified by the AJSG went beyond the tribunals system, and included problems with public sector complaints handling processes.¹⁰ Problems with the current arrangements were also identified by the Fit for Purpose Complaints System Action Group, which provided Scottish Ministers with a number of proposals for simplifying complaints processes for public services.¹¹
19. It is vital that administrative justice is viewed in its widest sense, rather than focusing only on tribunals. Just as we have a clear view that courts should be a remedy of last resort for those with private disputes, we would also maintain that tribunals should be a last resort for those with disputes that fall within the sphere of the administrative justice system. If complaints and disputes were to be resolved earlier, through improved complaints handling mechanisms, use of appropriate ombudsman schemes or use of alternative dispute resolution, there would be less need for more formal tribunal processes.
20. We believe it is a strength of the AJTC that its remit is much broader than that of its predecessor, the Council on Tribunals, enabling it to examine the full range of issues relevant to administrative justice, including the initial decision-making by public bodies affecting citizens' rights and interests. Indeed, we would note that the AJTC recently published a report on 'getting it right first time,' which made a number of recommendations for original decision makers, government, parliamentary bodies and tribunals designed to ensure the quality of decision making is improved.¹² We believe that improving the quality of initial decision making is not only in the interests of consumers (both as users of public services and as taxpayers), but also of government, in terms of potential savings through increased efficiency and cost effectiveness.
21. We believe a risk of abolishing the AJTC and its Scottish Committee is that its wider function to examine the full range of issues relevant to administrative justice may be lost, together with the associated ability to ensure the effectiveness of the system as a whole. Should the functions of the SCAJTC pass to the proposed Civil Justice Council or another organisation, it is essential that the focus for these bodies should include the ability to consider and examine earlier decision making by a wide range of public sector organisations, including those outwith the justice sector, as well as ensuring the effective operation of the tribunals system.

⁹ Consumer Focus Scotland (2009) *Administrative Justice in Scotland – The Way Forward: The final report of the Administrative Justice Steering Group*, Glasgow: Consumer Focus Scotland

¹⁰ Consumer Focus Scotland (2009) *Administrative Justice in Scotland – The Way Forward: The final report of the Administrative Justice Steering Group*, Glasgow: Consumer Focus Scotland

¹¹ Fit for Purpose Complaints System Action Group: Report to Ministers (July 2008)

¹² Administrative Justice and Tribunals Council (2011) *Right First Time*, London: Administrative Justice and Tribunals Council

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We can often make our publications available in Braille or large print, on audio tape or computer disk. Please contact us for details.

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10 October 2011

Dear Sirs

Re: Consultation on reforms proposed in the Public Bodies Bill

The Law Society is the representative body of over 140,000 solicitors qualified in England and Wales. The Society negotiates on behalf of the profession and makes representations to regulators, governments and others.

We are grateful for the opportunity to comment. We have focussed on areas of particular concern to solicitors in their daily practices.

Question 1: What are your views on the proposed abolition of the Administrative Justice and Tribunals Council (AJTC)?

The Administrative Justice and Tribunals Council, and its predecessor the Council on Tribunals, have served an invaluable purpose. The courts and tribunals provide a vital public service. The speedy, effective administration of justice is a hallmark of a society that values the rule of law. There is often a tension between the courts and tribunals and the Government and an indirect incentive on Government to underfund this area of work. It is therefore particularly important that there should be independent advice and scrutiny.

The Administrative Justice and Tribunals Council keeps the administrative justice system under review and seeks to influence the development and improvement of administrative justice and tribunals. It seeks to ensure that tribunals are accessible, fair and efficient and reflect the needs of users. It has promulgated coherent principles and promotes good practice. It has monitored the Tribunals Service (now HM Courts and Tribunals Service) and the performance of individual tribunals. The Council had a key policy role in the discussion of the amalgamation of the various tribunals into a coherent Tribunals Service which was achieved under the Tribunals, Courts and Enforcement Act 2007.

The AJTC also keeps under review the processes for administrative decision making. It recently reported on the increasing volume of appeals to tribunals relating to entitlement to social security benefits, the high percentage of successful appeals and the evidence that one of the principal reasons for these trends has been declining standards in the processing of the original applications. At a time when the availability of legal aid is declining for most people, it should be even more imperative to ensure fairness in the processes by which first instance decisions are taken.

The Law Society considers that the functions of the AJTC have been valuable and worthwhile. It is regrettable that the political decision has been taken to abolish the Council. In our view a team of civil servants within the Justice Policy Group at the Ministry of Justice is no substitute for an independent body which is much better placed to take account of the interests of users of the tribunals.

Question 2: Do you believe that there are any functions of the AJTC that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out above? Please state what these are and your reasons.

The key loss will be the continuous monitoring of the performance of the tribunals by an independent body which can also provide an independent voice pressing for improved standards and performance for users. A unit within the Ministry will only be one of many competing voices within the justice system and is less likely to succeed in the scramble for resources, both financial and administrative.

Question 3: Do the proposals have any significant direct impact on you (if so, please explain the impact)?

We fear that the tribunals will be unable to sustain the progress that has been achieved, particularly in respect of the amalgamation with a unified Tribunals Service in recent years. Solicitors are one of the key stakeholders and the Law Society will need itself to monitor the tribunals to ensure that the good standards that have been achieved are not now dissipated.

Courts Boards

Question 4: What are your views on the proposed abolition of the Courts Boards?

The Law Society is increasingly concerned about the state of the court system. That concern pre-dates the significant budget cuts within the Courts and Tribunals Service. The upkeep of buildings has deteriorated. The number of and the service provided by court staff have declined. As a result the users of the court system are confronting deteriorating standards and increasing inconvenience.

It is against that backdrop that the proposed abolition of the Courts Boards has to be assessed. The Courts Boards are advisory. Nonetheless they do provide a mechanism whereby users of the courts can monitor standards in the courts and press for improvements in court administration services. If the Courts Boards are to be abolished there must be an alternative means by which local court users can convey their views and concerns to Area Directors. Insofar as in many places there are local consultative court user groups, the abolition of the Courts Boards may not be of serious concern.

Question 5: Do you believe that there are any functions of the Courts Boards that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out above? Please state what these are and your reasons.

For the reasons given in our answer to the previous question, there are valid functions currently performed by the Courts Boards. There must continue to be channels whereby the voice of the users of the courts can be heard by those who run the courts on behalf of the public. Practitioners and the public have noticed and continue to note the deteriorating condition of and service at the courts. The position is only likely to worsen with the public expenditure cuts. The abolition of the Courts Boards could be interpreted as a convenient method of choking off public criticism of those deteriorating conditions.

Question 6: In your opinion how can local courts and tribunals reinforce the link between them and the local community?

By ensuring that there are local channels for communicating the concerns of court users, listening to and responding to those concerns. Local court user groups would seem to be a reasonable and minimum expectation.

Question 7: Do the proposals have any significant direct impact on you (if so, please explain the impact)?

They could impact upon the members of the Law Society who are amongst the professional users of the courts.

Crown Court Rule Committee

Question 8: What are your views about the proposal to abolish the Crown Court Rule Committee?

Given that rules relating to criminal proceedings have already been transferred to the Criminal Procedure Rules Committee and the residual rules for civil matters in the Crown Court can be transferred to the Civil Procedure Rule Committee and the Family Procedure Rule Committee, we do not object to the proposed abolition of the Crown Court Rule Committee.

Question 9: Do you consider that the proposals to abolish the Crown Court Rule Committee and transfer functions to the Lord Chief Justice and the other rule committees will ensure that the Crown Court Rule Committee's existing remit can be taken forward? Please explain your reasons if not.

Yes.

Her Majesty's Inspectorate of Court Administration (HMICA)

Question 10: What are your views on the proposed abolition of HMICA?

There is little point in expressing a view on the abolition of HMICA as it ceased to function on 31 December 2010. As with our response to the proposed abolition of the Courts Board, we are concerned that yet another means of monitoring the conduct of business in the courts is being removed at a time of deteriorating standards and services within the courts. HMICA was tasked with keeping under review the end to end justice process and improving the experience of court users.

Question 11: Do you believe that there are any functions of HMICA that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out above? Please state what these are and your reasons.

We reiterate our recommendation for local court user groups to enable their concerns about the courts to be communicated to the Courts and Tribunals Service.

Magistrates' Courts Rule Committee (MCRC)

Question 12: What are your views about the proposal to abolish the MCRC?

The principal function of the Magistrates' Courts Rule Committee has already passed to the Criminal Procedure Rule Committee and the family Procedure Rule Committee. The remaining civil non-family proceedings in the Magistrates' Court are very narrow and rules are rarely made. We therefore have no objection to the abolition of the Magistrates' Courts Rule Committee.

Question 13: Do you consider that the proposals to abolish the MCRC and transfer its consultative functions to the other rule committees will ensure that the MCRC's existing remit can be taken forward? Please explain your reasons if not.

Yes.

Office of the Chief Coroner

Question 14: What are your views on the proposed transfer of functions of the Chief Coroner to the Lord Chief Justice and the Lord Chancellor: in principle, and/or in relation to the particular functions detailed in Annex A?

We are disappointed that the Government has not delivered on the promise in the Coroners and Justice Act 2009 for the introduction of a Chief Coroner. We regarded that post as vital for the introduction of independent control over the coronial service which should have delivered improved services and standardisation of the service across the country, not least in protecting the service from disproportionate reductions in public expenditure cuts.

The abolition of the Chief Coroner and the proposed alternative arrangements will not deliver a uniform standard nor adequate funding for the coroner service which is long overdue. The appeals process envisaged would have brought about improved standards and operated a fairer and more efficient system for the bereaved who had concerns about the decisions taken by the coroner. The bereaved have very little prospect of being able to judicially review individual decisions. The proposals also mean that coroners will not have access to additional medical support which would have been provided by the Chief Medical Officer in the Chief Coroner's office. A vital part of the role of the Chief Coroner was to oversee the training and guidance not only of coroners but also their officers who have most contact with the public.

Thus the stated aims to improve the experience of those bereaved people coming into contact with the coroner system, giving them rights of appeal against coroners' decisions and setting out the general standards of service they can expect to receive, to reduce delays, to improve the quality and outcomes of investigations and inquests through improved powers and guidance for coroners, and to introduce a system - for deaths not investigated by the coroner - that enables independent scrutiny and confirmation of the medical cause of death in a way that is proportionate, consistent and transparent cannot be met. More importantly an opportunity to prevent further deaths will be lost.

Question 15: What are your views on the proposed Ministerial Board and supporting Bereaved Organisations Committee?

We consider a committee of voluntary bereavement organisations to be a very poor and inadequate alternative to the institution of the Chief Coroner. It will not be able to monitor the standards of service delivery within the Coroner Service; nor will it have the standing to influence Government and Parliament in the direction of improved

standards. The proposed Ministerial Board is similarly likely to be toothless. It will be no substitute for a body independent of the Ministry of Justice.

Question 16: Are there any functions of the Chief Coroner not adequately covered by the proposals above, in your opinion? Please explain your reasons.

Annex A to the consultation paper lists the statutory functions of the Chief Coroner and the person or body to whom those functions are to be transferred now that the Chief Coroner is no longer to be established. It omits the functions under schedule 5 of the Coroners and Justice Act 2009 to authorise the entry on to and the search of land in relation to an investigation, retaining records of those authorisations until the annual report to the Lord Chancellor.

In relation to the transfer of the Chief Coroner's functions we have two points. Transfer to the Lord Chief Justice will add a new and different jurisdiction to his existing responsibilities. Transfer to the Lord Chancellor could bring into question the independence and political impartiality of any decision.

Public Guardian Board (PGB)

Question 17: What are your views on the proposed abolition of the PGB?

The Public Guardian Board acting as the independent watchdog for the Public Guardian has provided a valuable safeguard, particularly in relation to the rolling out of legislative changes. If the Board is abolished, it will be even more important for the Government to be alive to the need to have strong mechanisms for the oversight of the Public Guardian's functions.

We are encouraged by the confirmation that, if the Public Guardian Board is abolished, it will not in any way alter the Public Guardian's duties or statutory functions themselves.

We recognise that it makes sense economically to abolish the Public Guardian Board, however it is vital to ensure that vulnerable people continue to have proper protection.

The Law Society believes that the Public Guardian Board has undertaken valuable work, particularly when the Mental Capacity Act 2005 was first implemented and has carried out its important functions under often challenging conditions.

Question 18: Do you believe that there are any functions of the PGB that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out above? Please state what these are and your reasons.

We are unable to answer this question without greater detail about how it is intended to scrutinise the Public Guardian's functions if the Board is abolished.

The consultation paper only generically refers to "alternative robust governance arrangements" which will include "independent non-executive input" from individuals with appropriate knowledge and expertise.

We would, however, make the point that input from individuals with legal and financial services expertise should be sought as well as from individuals with medical or welfare expertise.

The National Archives

Question 19: Do you agree that it is now appropriate to reflect in legislative terms the administrative changes already completed, to ensure the appropriate consolidation of functions?

No comment.

Victims' Advisory Panel (VAP)

Question 20: What are your views on the proposed abolition of the VAP?

Given that the functions of the Victims' Advisory Panel can be dealt with by the Commissioner for Victims and Witnesses, we do not object to the proposed abolition of the Panel.

Question 21: Do you believe that there are any functions of the VAP that cannot be adequately addressed by the Commissioner for Victims and Witnesses? Please state what these are and your reasons.

No.

Question 22: Do the proposals have any significant direct impact on you (if so, please explain the impact)?

No.

Youth Justice Board (YJB)

Question 23: What are your views on the proposed abolition of the YJB?

The creation of the Youth Justice Board (YJB) was a significant development in the effort to reduce youth crime and youth offending. The YJB provided a clear statement of intent to treat youth offending differently from its adult counterpart.

Since its establishment, there has been a fall in the number of young people entering the criminal justice system for the first time and in the number of young people in custody, and improvements in the frequency and seriousness of reoffending. In the decade following the YJB's creation, there has been a 45 per cent drop in the number of young people entering the youth justice system and a 5,600 reduction in re-offences by under-18s, while 25,000 children and young people are in targeted prevention programmes.

The 157 Youth Offending Teams (YOTs) around England and Wales have been instrumental in securing these achievements. It is crucial that any changes to the YJB should seek to minimise the impact on the work of YOTs.

Despite these achievements, the UK still has one of the highest rates of child imprisonment in Europe. The rationale for the creation of the YJB back in 1998 is still valid today. There is an inherent risk that the abolition of the YJB will remove some of the attention and resources specifically devoted to reducing youth crime.

The Law Society does not support the merger of the Youth Justice Board into the mainstream Ministry of Justice. Youth justice is a distinct and specialised area of law and policy, where the welfare of children should always take precedence. The

independence of the YJB from the Ministry of Justice has meant that the specialised nature of this jurisdiction can be maintained, and the YJB can concentrate on its principle purpose of promoting the welfare of children in the youth justice system.

Since its creation in 1998 the YJB has established a strong relationship with the bodies interested in youth justice which could be damaged if the independent body is replaced by a division within the Ministry of Justice. Others involved in youth justice (e.g. youth offending teams, defence solicitors) have been able to meet and through a process of dialogue put their views to those working in the YJB. The YJB has been particularly concerned to reduce the number of children who are subject to detention which has great cost implications.

The YJB is seen as an impartial organisation with a single purpose to develop and improve youth justice practice both pre conviction and post conviction for the child or young person - no one else. It has a value that is difficult to measure. It occupies a unique position as opposed to rubbing shoulders in the same building with lots of other criminal justice groups with other responsibilities. Even as a neutral meeting point for different interest groups from HM Courts and Tribunals Service/defence/prosecution/the judiciary/YOTs it has established a separate identity that serves a very useful purpose.

The Law Society is concerned that by merging its functions into the Ministry of Justice this independence and primary focus will be lost, as it may conflict with the principle purpose of the Ministry. The forecast saving of £6.5m could be completely wiped out if the trend towards non-custodial disposals for children is reversed, more children are locked up and the societal costs incurred if the progress on youth crime issues is not sustained escalate. A prudent balance must be struck between short term savings and longer term outcomes. Less damaging savings could be made through reforming the YJB, principally in infrastructure and estate costs.

There is potential for serious conflicts of interest. The YJB is a non political body looking after the welfare of children and young persons. It does not represent victims of crime or indeed any other political concern of the justice system or sentencing. Having its responsibilities subsumed into a Ministry that is also responsible for the administration of the courts, the prison system, and other justice issues may be detrimental. It may dilute the current culture of independence and neutrality.

The youth justice system is particularly vulnerable to political posturing and bringing it closer to Government will make this even more likely. There is much to be said for leaving it to specialist independent professionals to avoid political tinkering/damage.

Youth justice was separated from the Children's Services remit some time ago, thereby moving it further from welfare and education professionals. In doing so the vital connection between education, social services and youth justice are damaged. The abolition of an independent YJB will accelerate that process at a time when the Government seems committed to tackling the links between offending in young people and other social issues. These connections will be lost if youth justice becomes a junior branch of criminal justice at the Ministry of Justice.

Whilst opposing abolition of the YJB, the Society does welcome the fact that the proposed Youth Justice Division within the MOJ would incorporate existing YJB staff and management.

Question 24: Do you believe that there are any functions of the YJB that will not be adequately covered following the proposed abolition and suggested

future handling of functions as set out above? Please state what these are and your reasons.

The YJB has a statutory function to advise Ministers. Its political independence provided a safeguard that its advice would be objective. This duty risks being compromised if the YJB is subsumed within the MOJ: officials receive their instructions from Ministers and may be inclined to give Ministers the advice that they want to hear.

The YJB has a duty to drive improvements in youth justice and to hold local authorities (and providers of custodial and community sentences) to account. This has meant leading and monitoring the local delivery of youth justice services, mainly through managing youth offending teams. This is a difficult task, which requires direct engagement with, and knowledge of, local circumstances and institutions.

The YJB has a duty to provide research, guidance, and dissemination of best practice on youth crime reduction strategies. There is a risk that in future research might be seen as politically motivated, or that youth justice research will lose out to broader research strands within the MOJ.

The YJB's function as an independent body leading discussion and providing information and resources addressing the distinct issues that youth justice professionals engage with everyday cannot be done as a department within a body (the MOJ) that is responsible for HM Courts and Tribunals Service and has strong links with the Criminal Prosecution Service/Director of Public Prosecutions.

Question 25: How do you believe that the Government can best ensure effective governance of youth justice in the future?

Our preference is for the retention of the YJB. Irrespective of the future of the YJB, it is crucial that the integrity of the functions of the YJB are preserved, even if the infrastructure is subsumed within the Ministry of Justice.

The YJB's independent perspective and the distinctive focus which it brought to youth crime issues must not be lost amidst the new arrangements. Youth crime is an emotive and politically charged issue, and that independent perspective may well be lost if ministers are responsible and accountable for the newly created Youth Justice Division.

We hope that these comments will be useful.

Yours faithfully

A handwritten signature in black ink, appearing to be 'S Durno', with a long horizontal line extending to the right.

Steven Durno, Policy Officer

Local Government OMBUDSMAN

10 October 2011

Public Bodies Bill Team
Ministry of Justice
Post Point 3.18
102 Petty France
London SW1H 9AJ

Dear Sir / Madam

Consultation – Public Bodies Bill: Reforming the Public Bodies of the Ministry of Justice

We are writing in relation to the consultation on reforms proposed in the Public Bodies Bill, which include proposals to abolish the Administrative Justice & Tribunals Council.

In responding to the consultation we recognise that it is for Parliament to decide whether the costs of any public body are justified.

The Law Commission recently described the 'four pillars' of administrative justice - first instance resolution by public authorities, Ombudsmen, Tribunals and Courts. The proposed abolition of the AJTC indirectly impacts on the Local Government Ombudsman.

In our experience, since its inception the AJTC has developed as an increasingly valuable and respected force for the development of mutual understanding between Ombudsmen, Tribunals and Courts. Through its newsletter and annual conference, the AJTC has done much to promote the sense of a system of administrative justice across the UK in which each component plays its particular and distinctive part and in which the citizens' interests are represented. We are concerned that, as this goes beyond oversight of administrative justice policy, it will not be continued by the Ministry of Justice.

We are also concerned that the proposed alternative arrangements will not replicate the AJTC's crucial function of considering ways to make the administrative justice system accessible, fair and efficient.

Yours faithfully



Jane Martin
Local Government Ombudsman
Acting Chair



Anne Seex
Local Government Ombudsman



SENIOR PRESIDENT
OF TRIBUNALS

Public Bodies Bill Team,
Ministry of Justice,
Post point 3.18
102 Petty France,
London SW1H 9AJ

10th October 2011

CONSULTATION: 'Public Bodies Bill: reforming the public bodies of the Ministry of Justice'

I want to put on the record my appreciation of the contribution that the AJTC (and its forerunner, the Council on Tribunals) has made over many years to the development and supervision of the tribunal and inquiries system in the interests of its users across the whole UK. They played a crucial role in the tribunal reform programme, and in getting the Tribunals, Courts and Enforcement Act onto the statute book and into operation.

By volume administrative justice is the largest area of the justice system and the area with which citizens are most likely to come into contact. It is for the Ministry to decide where its hard pressed resources are spent however it is my view that there are a number of functions of the AJTC which are worth preserving and for which statutory responsibility might transfer to existing bodies.

The Tribunals, Courts and Enforcement Act extended the AJTC remit beyond tribunals and inquiries to the whole administrative justice system (including courts and ombudsmen). In that respect its responsibilities mirrored, and in some respects overlapped with those of the Civil Justice Council. The UK wide remit of the AJTC has also facilitated developments in administrative justice in Scotland and Wales. The reports on tribunal reform, respectively, of the Scottish and Welsh committees, have been of central importance to the debate in both countries. The recent Scottish Government consultation paper on the formation of a Scottish Civil Justice Council asks whether the scope of their proposed Council should extend wider than the courts to include administrative justice and tribunals. Consideration should in my view be given to exploring a similar model for England and Wales.

More generally there are a number of functions of the AJTC which reflect its independence from government, and which cannot therefore be replicated by the MoJ itself. I have yet to see a convincing review of these functions, and possible destinations following the demise of the AJTC. In addition no adequate provision appears yet to have been made for the supervisory functions of the AJTC in relation to non-TCEA tribunals and inquiries, whose administration (contrary to Leggatt principles) remains generally with the original decision making departments. Whilst those tribunals remain outside the MoJ, responsibility for their oversight should be transferred to an institution with statutory independence (rather than, as is suggested for PINS, through a quality assurance unit within the sponsoring department).

Finally the AJTC has, through its publications and conferences, been a central repository of information about tribunals, and a hub for exchange of information and discussion on administrative justice issues – whether falling under HMCTS or beyond. It is important that this function is retained, either through MoJ alone, or perhaps in tandem with academic institutions.

A copy of this letter goes to the Lord Chancellor and Jonathan Djanogly as Minister responsible for tribunals and administrative justice.

Yours

A handwritten signature in black ink, consisting of a stylized 'R' followed by a long, sweeping horizontal stroke that ends in a small upward flick.

Sir Robert Carnwath
SENIOR PRESIDENT OF TRIBUNALS

Public Bodies Bill Team
Ministry of Justice
Post point 3.18 102
Petty France
London SW1H 9AJ

Consultation: 'Public Bodies Bill: reforming the public bodies of the Ministry of Justice'

Dear Sir/Madam,

I am responding to the consultation as the Co-ordinator of the Londonwide Education Appeals Support Initiative (EASI) Group in respect of the proposals in the Public Bodies Bill for the AJTC. The London EASI Group represents those involved in the clerking and administration of the Independent Appeals Panels throughout the London Boroughs and also Diocesan Bodies and Independent Clerks responsible for this role within London schools.

You will be aware that the AJTC currently oversees this process and provides independent support and guidance to those involved in the administration of education appeals.

The London EASI Group wishes to support the comments submitted in respect of the consultation by the AJTC and also the wider EASI Group nationally, as submitted by Sheila Sturgeon.

The London EASI Group owes its existence to the offices of the AJTC, as that body recognised, with the Ministry for Education (now the DfE) that, given the high number of appeals across the London boroughs and the range of clerking with own admission authorities, that there was a need to establish a Group to share experience and good practice. This has proved very successful owing to the continuing support of the AJTC, who have enabled the Group to thrive and develop by allowing us to meet in their central London premises.

Statistics show that the number of appeals within London is dramatically higher than many areas outside and rising population and other development putting additional pressures on London schools mean that trend is likely to continue. There is also a pattern in London of a large number of own admission authorities where the appeals are not heard through the local authority. The support and guidance of an independent body such as the AJTC has been particularly important as a source of advice for all clerks but especially independent clerks without the resources of a local authority available to them. The EASI Group, facilitated by the AJTC, has also proved an important shared resource in this respect.

These initiatives have established better local decision making for education appeals. The London EASI Group sees no alternative provision within the new proposals to replicate this. It is not clear what or indeed whether independent support and guidance would be available for the Independent Appeals Panels.

The London EASI Group consider this oversight of the appeals processes especially important and are anxious that this should not be lost in the new proposals. Rather than reinvent the wheel, we would support the retention of the AJTC to continue to support us in this important function.

Thank you for the opportunity to respond to the consultation.

Regards,

Carol Stiles

Co-ordinator of the Londonwide EASI Group on behalf of the Group

Principal Committee Administrator

Committee Section, Democratic Services

London Borough of Hounslow

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Tel. 020 8583 2066

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Public Bodies Bill Team
Ministry of Justice
Post Point 3.18
102 Petty France
London
SW1H 9AJ



11 October 2011

Dear Sir/Madam

CONSULTATION: PUBLIC BODIES BILL: REFORMING THE PUBLIC BODIES OF THE MINISTRY OF JUSTICE

PROPOSED ABOLITION OF THE ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL

Introduction

As the Ministry of Justice will be aware, the UK Parliamentary Ombudsman is an ex officio member of the Administrative Justice and Tribunals Council (AJTC), and a member of both its Scottish and Welsh Committees.

I have been the UK Parliamentary Ombudsman since November 2002. In that capacity I have served as an ex officio member of the Council on Tribunals, and its Scottish Committee; and its successor, the Administrative Justice and Tribunals Council, and both its Scottish and Welsh Committees.

I was also heavily involved, as a member of the Executive Committee of the British and Irish Ombudsman Association (BIOA), in the extensive contribution BIOA made to the 2004 White Paper, *Transforming Public Services: Complaints, Redress and Tribunals*, which led to the establishment of the AJTC. I spoke at its launch in 2007.

I would also add that from 1997 to 2002 I was Legal Services Ombudsman for England and Wales - an associated office of the Ministry, in its former guise as the Lord Chancellor's Department - which brought me into extensive contact with Ministry of Justice officials.

I therefore offer this response from a uniquely UK-wide, long-standing and broad perspective.



I am both bewildered and dismayed by the proposed abolition of the AJTC. I am bewildered because administrative justice is so important to the relationship between citizen and state. The outcomes of decision-making by a wide range of public bodies on a daily basis affect family incomes, jobs, healthcare, housing, education and much, much more. Citizens are just as likely, if not more likely to come across administrative justice issues in their ordinary lives than civil, or even family justice issues. In the circumstances I find it inexplicable that the Ministry is proposing to abolish the AJTC whilst retaining the Civil Justice Council and the Family Justice Council.

I am dismayed because I believe that the AJTC's abolition would have a deleterious impact on the delivery of administrative justice in the UK, on the relationship between citizen and state, and on the ongoing process of devolution.

ANSWERS TO CONSULTATION QUESTIONS

1. What are your views on the proposed abolition of the AJTC?

At the launch of the AJTC in November 2007, I observed that:

'Today is an important landmark - and a turning point - in the history of administrative justice in this country. This is a tremendous, long awaited and much needed opportunity to start to develop a system of administrative justice which is accessible, fair, effective and efficient - certainly; but which is also comprehensive, coherent and co-ordinated; which learns from experience; which drives improvements in administrative practice; and which builds public confidence.'

I am still of that view and therefore consider the proposed abolition of the AJTC to be a regressive step.

First, the AJTC was the first, and so far only, public institution to have in its sights the administrative justice 'system' as a whole, not just a part of it, like its predecessor the Council on Tribunals. In that context it has enjoyed a privileged overview of the system in all its parts: administrative court, tribunals, ombudsmen and first-instance decision-makers.

Secondly, the AJTC has a particular eye for the user perspective and reflects that perspective in its composition.

Thirdly, from my unique perspective I can say with confidence that the AJTC is the only organisation that has a UK perspective on administrative justice. The interlocking relationship between the Council itself and its Scottish and Welsh Committees, alongside its strong contacts with administrative justice in Northern Ireland, enables the AJTC to stay close to developments within each nation, as well as to the different perspectives that each nation has on matters of common concern. As a result, the AJTC has a unique role to play

as the devolution settlement continues to evolve, with all its constitutional complexity.

2. Do you believe that there are any functions of the AJTC that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out in the consultation paper? Please state what these are and your reasons.

My extensive contact with the Ministry of Justice, in its various guises over many years, gives me no confidence whatsoever in the ability of the Ministry to assume the functions of the AJTC. However well-meaning and diligent individual officials may be, the Ministry simply lacks the institutional history, capacity and technical knowledge to do so.

I therefore consider that none of the core functions of the AJTC will be adequately covered. There will not be a competent organ of government to keep under review the administrative justice system as a whole; nor will there be anybody with the capacity and expertise to keep under review, and report on, the constitution and working of 'listed' tribunals or of statutory inquiries.

I do not believe that the Ministry would be able to bring to the task of considering how to make the system more accessible, fair and efficient anything like the resourcefulness and expertise of the AJTC. The capacity for envisioning the future development of administrative justice and for formulating proposals for change and research would be hugely, and irreversibly, depleted.

In addition, the fact that the Ministry is a government department means that, by definition, it lacks the essential independence of judgment and freedom of action to challenge policy proposals as enjoyed by the AJTC. That factor alone undermines the ability of the Ministry, or indeed any other central government department, to replicate the AJTC's current function.

3. Do the proposals have any significant direct impact on you (if so, please explain the impact)?

When the Parliamentary Ombudsman was established by statute in 1967, the expectation was that the Ombudsman would be integral to the wider system of administrative justice that was beginning to emerge in the aftermath of the Franks Report in 1957.

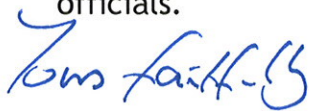
Although the number of ombudsmen and other complaint handlers has grown significantly in the interim period, and although the administrative justice system as a whole has continued to evolve, with the exception of the AJTC there has never been a public institution charged with the task of ensuring a due measure of coherence and integration.

The existence of the AJTC has provided the Parliamentary Ombudsman in particular, and ombudsmen and complaints handlers in general, with a forum for forging a shared outlook with other parts of the system, and for achieving a voice that is independent of government and that has the interests of ordinary citizens as its focus.

The abolition of the AJTC would therefore have the direct impact of denying the Parliamentary Ombudsman such a forum and such a voice, and thereby of depleting the efforts of the Ombudsman to shape the administrative justice agenda by reference to the empirical experience of handling citizens' complaints.

I hope you find these comments of interest and would be happy to expand on them in person if what would be helpful. As I have indicated in my introductory comments, I believe that my perspective on these issues is a uniquely well-informed one and I hope that the Government will take note of my serious concerns about its proposal.

In view of my membership of the AJTC's Scottish and Welsh Committees I am sending copies of this letter to Scottish and Welsh Ministers and senior officials.



Ann Abraham
**UK Parliamentary Ombudsman
and Health Service Ombudsman for England**

Copies to

Carwyn Jones, First Minister for Wales
Dame Gill Morgan DBE, Permanent Secretary Welsh Assembly Government
Kenny MacAskill MSP, Justice Secretary, Scottish Government
Christine Grahame MSP, Convener of the Justice Committee, Scottish Government
Norman Egan, Head of Scottish Tribunals
Jonathan Djanogly MP, Parliamentary Under Secretary of State, Ministry of Justice
Sir Suma Chakrabarti KCB, Permanent Secretary Ministry of Justice
Rt Hon Francis Maude MP, Minister for the Cabinet Office
Sir Gus O'Donnell KCB, Cabinet Secretary and Head of the Home Civil Service
Bernard Jenkin MP, Chair Public Administration Select Committee
Lord Newton of Braintree

Consultation on reforms proposed in the Public Bodies Bill

Reforming the public bodies' landscape of the Ministry of Justice.

List of questions for response

We would welcome responses to the following questions set out in this consultation paper. Please feel free to answer only those in which you have a specific interest. Please email your completed form to: PBB.Consultation@justice.gsi.gov.uk, or fax to: 020 3334 6452.

Administrative Justice and Tribunals Council (AJTC)

Question 1. What are your views on the proposed abolition of the AJTC?
<p>Comments: I am a qualified solicitor with a number of years past experience in representing patients appealing to the First –tier Tribunal (Mental Health). I am a member of the Law Society’s Mental Health Panel. I currently work in the Legal Unit at Mind. I am submitting this as a personal response to the proposed abolition of the AJTC.</p> <p>In my experience, the AJTC has fulfilled an important role in promoting meetings and thereby cooperation between key stakeholders for mental health tribunals. This has facilitated improvements in practice. The independence of the AJTC is particularly important in ensuring full discussion and debate. This year the AJTC with the CQC published the first research study that recorded the views of appellants to the First-tier Tribunal (Mental Health)¹. This identified important areas of concern and made useful recommendations. Until the AJTC/CQC undertook this piece of work the views of tribunal users in this group had been overlooked.</p>

¹ Patients’ experiences of the First-tier Tribunal (Mental Health) March 2011

Question 2. **Do you believe that there are any functions of the AJTC that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out in the consultation paper? Please state what these are and your reasons.**

Comments: I do not believe the proposals made are in any way adequate. An independent public body can ensure that the views of users and other stakeholders can be canvassed and scrutinised objectively without the conflicts of interest. The AJTC has accrued expertise and has good connections with a range of professional bodies. This promotes communication and cooperation.

Question 3. **Do the proposals have any significant direct impact on you (if so, please explain the impact)?**

Comments: It has been very useful to have the opportunity to meet with other professions and representatives of different stakeholder groups to listen to their concerns and exchange views. This has informed my work in the Legal Unit at Mind. There are no proposals as to how in future the interests and views of those patients who use the First-tier Tribunal (Mental Health) are to be protected or promoted.

Courts Boards

Question 4. **What are your views on the proposed abolition of the Courts Boards?**

Comments:

Question 5. **Do you believe that there are any functions of the Courts Boards that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out in the consultation paper? Please state what these are and your reasons.**

Comments:

Question 6. **In your opinion, how can local courts and tribunals reinforce the link between them and the local community?**

Comments:

Question 7. **Do the proposals have any significant direct impact on you (if so, please explain the impact)?**

Comments:

Crown Court Rule Committee

Question 8. **What are your views about the proposal to abolish the Crown Court Rule Committee?**

Comments:

Question 9. **Do you consider that the proposals to abolish the Crown Court Rule Committee and transfer functions to the Lord Chief Justice and the other rule committees will ensure that the Crown Court Rule Committee's existing remit can be taken forward? Please explain your reasons if not.**

Comments:

Her Majesty's Inspectorate of Court Administration (HMICA)

Question 10. **What are your views on the proposed abolition of HMICA?**

Comments:

Question 11. **Do you believe that there are any functions of HMICA that will not be adequately covered following the proposed abolition and suggested future handling as set out in the consultation paper? Please state what these are and your reasons?**

Comments:

Magistrates' Courts Rule Committee (MCRC)

Question 12. **What are your views about the proposal to abolish the MCRC?**

Comments:

Question 13. **Do you consider that the proposals to abolish the MCRC and transfer its consultative functions to the other rule committees will ensure that the MCRC's existing remit can be taken forward? Please explain your reasons if not.**

Comments:

Office of the Chief Coroner

Question 14. **What are your views on the proposed transfer of functions of the Chief Coroner to the Lord Chief Justice and the Lord Chancellor: in principle and/or in relation to the particular functions detailed in Annex A?**

Comments:

Question 15. **What are your views on the proposed Ministerial Board and supporting Bereaved Organisations Committee?**

Comments:

Question 16. **Are there any functions of the Chief Coroner not adequately covered by the proposals set out in the consultation paper, in your opinion? Please explain your reasons.**

Comments:

Public Guardian Board (PGB)

Question 17. **What are your views on the proposed abolition of the PGB?**

Comments:

Question 18. **Do you believe that there are any functions of the PGB that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out in the consultation paper? Please state what these are and your reasons.**

Comments:

The National Archives

Question 19. **Do you agree that it is now appropriate to reflect in legislative terms the administrative changes already completed, to ensure the appropriate consolidation of functions?**

Comments:

Victims' Advisory Panel (VAP)

Question 20. **What are your views on the proposed abolition of the VAP?**

Comments:

Question 21. **Do you believe that there are any functions of the VAP that cannot be adequately addressed by the Commissioner for Victims and Witnesses? Please state what these are and your reasons.**

Comments:

Question 22. **Do the proposals have any significant direct impact on you (if so, please explain the impact)?**

Comments:

Youth Justice Board (YJB)

Question 23. **What are your views on the proposed abolition of the YJB?**

Comments:

Question 24. **Do you believe that there are any functions of the YJB that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out in the consultation paper? Please state what these are and your reasons.**

Comments:

Question 25. **How do you believe that the Government can best ensure effective governance of youth justice in the future?**

Comments:

Please complete the section overleaf to tell us more about you.

About you

Please use this section to tell us about yourself

Full name	Angela Truell
Job title or capacity in which you are responding (e.g. member of the public etc.)	Solicitor
Date	11.10.11
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

ANNEX A – RESPONSE TO CONSULTATION QUESTIONS

Administrative justice tribunals council

1. What are your views on the proposed abolition of the AJTC?

The consultation paper states that the reason it is proposed to abolish the AJTC is because it duplicates the functions undertaken by the Ministry of Justice and the HM Courts and Tribunals Service. However it does not appear from the consultation paper that the position in Wales has been properly considered and taken into account. We do not have bodies undertaking equivalent functions in Wales and our programme of tribunal reform is much less advanced.

You will be aware that last year the Welsh Committee of the AJTC published a report on the “Review of Tribunals Operating in Wales”. The Welsh Government has embarked on a programme of reform to implement recommendations in that report. The consultation paper acknowledges that the AJTC had an influential role in helping to establish the unified Tribunals Service in England and we were anticipating that the AJTC would provide the same support for the programme of reform in Wales. The proposal to abolish it therefore comes at a rather critical time for us not just in relation to tribunal reform but for administrative justice in Wales as a whole including complaints handling and public services ombudsmen. The Welsh Government is still developing its policy on administrative justice and the Administrative Justice and Tribunals Unit, the Welsh Government’s nearest equivalent to the Ministry of Justice, is still a very small department in its infancy.

Question 2 Do you believe that there are any functions of the AJTC that will not be adequately covered following the proposed abolition and suggested handling of functions as set out above?

Question 3 Do the proposals have any significant direct impact on you?

It will be part of our programme of reform to consider what monitoring and review arrangements will be required so it is difficult to speculate on how the abolition of the AJTC will impact on those arrangements. However we anticipate that its abolition will leave gaps and we will need the flexibility to be able to put in place measures to fill those gaps. We may not necessarily be able to rely on our own legislative powers or those of the National Assembly for Wales to do so. This gives us cause for concern - the success of our administrative justice policy is very much dependent upon having a system that is accessible, fair and efficient and effective review and monitoring is an essential key to that success.

We would therefore want the AJTC to continue in so far as it exercises functions in Wales so that it may continue to provide support to the Welsh Government until such time as its programme of tribunal reform is sufficiently

advanced and at an equivalent stage as in England. At that stage it will be possible to carry out a similar analysis as has been carried out in England on where and the extent to which it duplicates functions carried out elsewhere.

National Archives

The Welsh Government has had a long and positive relationship with The National Archives and its predecessor bodies. Based on the information provided as part of the consultation it would appear that the proposed changes will not adversely impact on that relationship. Consequently the Welsh Government would welcome the legal recognition of The National Archives and the formal transfer of functions currently exercised under its auspices, as providing useful clarity about its statutory position and functions.

Youth Justice Board

Consultation Question 1. What are your views on the proposed abolition of the Youth Justice Board ?

We are disappointed to hear of the plans for abolition of the Youth Justice Board (YJB), with the proposed transfer of functions into the Ministry of Justice by 2012. We have invested heavily in a strong and positive working relationship with YJB since its inception, and our concerns focus on any negative impact this move of functions may have on cross-working and cross-government dynamics and relationships in all aspects of the youth justice agenda.

Within our government commitments relating to youth justice we make clear our aim of ‘preserving the legacy of the Wales Youth Justice Board and to establish an appropriate mechanism for maintaining a strategic view of youth justice provision in Wales’.

The Board has been an “effective leader of efforts to create and maintain a national youth justice system with a risk-based approach and in recent years key youth crime indicators have been falling substantially¹”. Indeed we have seen a welcome reduction in numbers of children and young people in custody, re-offending and first time entrants in the youth justice system. This is an excellent signal for future trends, and it is our view that the YJB has been a key influence in driving down this drop in youth crime. Consequently, this then proffers the question of whether the abolition of YJB puts these positive reductions at risk.

As you are aware, although youth justice is currently non-devolved the approach in Wales is heavily dependent upon many levers for prevention and rehabilitation which are devolved – such as education; health, social services and housing. As these services are part of the devolved responsibilities in Wales there may be limited opportunity to work closely and engage with the

¹ The Youth Justice System in England and Wales: Reducing offending by Young People, National Audit Office 2010

new Youth Justice Division. It will also be difficult for colleagues in the Youth Justice Division to develop policy which reflect the differing needs of children and young people at risk of or involved in the youth justice system, and who are to be resettled in Wales.

We have received some assurance from YJB that where currently we have some children and young people who for a variety of reasons cannot be accommodated in Wales, the needs of these Welsh children held in the English secure estate have been considered. We continue to pay close attention to this aspect of transferring children and young people away from their home. We have a vested interest in this enhanced specification, and been involved in the decisions around service specifications within HMYOI Hindley, which look to be strongly focussed in addressing the needs of this group of vulnerable children and young people, with key objectives in better promoting their welfare and effective resettlement. The minimum specification at HMYOI Hindley includes standards in education, vocational training, safeguarding, language, culture and religion and we look forward to the continued input to this innovative and promising initiative.

Another key concern raised across policy areas is that if the functions of the YJB are transferred to the MoJ, the quality of services for children and young people in Wales must be maintained and therefore the needs of the children and young people at risk of or involved in the youth justice system are still a priority, not driven aside by a wave of reforms and budget cutting. Additionally, we stress the importance of allowing adequate time for consideration, consultation and reviews on these important matters.

If the YJB is abolished then it must be ensured that the new arrangements have the credibility, capacity and capability to continue the improvements. Wales believes that children and young people who offend are children and young people first and offenders second. If the YJB functions are placed with the Ministry of Justice it will be important to ensure that the focus on preventing offending; which is the primary aim of the youth justice system (Crime and Disorder Act 1998) continues.

We have noted the encouraging discussions and ongoing consultations between Youth Justice Board, Ministry of Justice and Welsh Government officials around the potential transfer of functions. We welcome this continued and pro-active interest across our organisations to better understand each other and work through the not insurmountable challenges that non-devolved and devolved responsibilities bring forward, as well as cross-boundary considerations.

Question 2. Do you believe that there are any functions of the YJB that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out in the consultation paper? Please state what these are and your reasons.

As we have already stated under Question 1. key to the successes of the YJB has been its leadership role within Wales. Leadership is not a function that

can be readily moved. Any new arrangements will need to ensure that the youth justice lead is visible and continues to consider the differences working across devolved and non devolved areas.

The YJB have provided a vital and independent oversight of the youth justice service, and been an essential source of advice and expertise within Welsh Government policy development, as well as providing effective leadership and facilitation across governments, internal and external partners. This would be lost if the YJB is abolished.

Through local authority based Youth Offending Teams, the YJB has also driven work to reconnect children and young people who offend with mainstream services such as education and training and commissioned education and training to address the complex needs of many children and young people in the system. In addition, the YJB worked with the Welsh Government to set joint performance targets for Youth Offending Teams' interaction with devolved services, and we need to ensure that the proposed Youth Justice Division continues the Board's monitoring and performance setting role with regards to devolved policy areas. Reviewing plans and continual monitoring is also vital to ensure any changes are effective and any issues which arise picked up quickly, scrutinising public money spend to ensure it reaches and impacts positively on the lives of the children and young people concerned.

Consultation Question 3. How do you believe that the Government can best ensure effective governance of youth justice in the future?

We have already signalled many ways to ensure effective governance by exemplifying the YJB's role, some of their functions and the way they have undertaken those functions effectively over the last 10 years. Key to improving outcomes is the ability to work in partnership with a range of other government departments, devolved administrations and local authorities to essentially make informed decisions and really understand the youth justice landscape right across our respective areas. This is vitally important when the services and operational processes are often distinctly different to those in England. Such detail needs to be worked through to achieve the best outcomes for the children and young people at risk of offending or involved in the youth justice system.

In Wales we are fully supportive of a rights-based approach to policy that involves children and young people, and our All Wales Youth Offending Strategy Delivery Plan is underpinned by the principles of the UNCRC. We would expect a rights-based approach to be intrinsic to all issues affecting children and young people and youth justice policies and the governance thereof.

Education and training are central to meeting the aims of the youth justice system. Any new arrangements must ensure that Wales' distinctive education and training system and children and young people's rights approaches are properly considered and integrated into future policy and delivery.

To understand the youth justice system, and thereby ways to govern it more effectively, means better understanding of the children and young people involved. We strongly recommend better and proactive encouragement of participation with children and young people, greater involvement in discussions and key decision-making around these important issues which affect them and their futures.

We are grateful for this opportunity to contribute to this Consultation, and look forward to continued opportunities for Welsh Government to be involved with Youth Justice Board, Ministry of Justice and UK Government across a wide range of issues.



Response to
Ministry of Justice Consultation on reforms
proposed in the Public Bodies Bill
Reforming the public bodies of the Ministry of
Justice

September 2011

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Introduction

1. JUSTICE is an independent all-party legal and human rights organisation, which aims to improve British justice through law reform and policy work, publications and training. Its mission is to advance access to justice, human rights and the rule of law. It is the UK section of the International Commission of Jurists.
2. JUSTICE has briefed on the Public Bodies Bill during its passage through Parliament and suggested relevant amendments. Our briefings are available from the JUSTICE website. In them we express our serious concerns at the Bill's use of secondary legislation (in the form of 'Henry VIII clauses') to allow the abolition and amendment of public bodies established by primary legislation. We therefore oppose the Bill in its entirety. Our concerns are even stronger in relation to those public bodies in the Bill with functions relating to the administration of justice and/or the promotion and protection of human rights. While some such bodies have been removed from the Bill following widespread opposition, others – including the Equality and Human Rights Commission, amongst others – remain.
3. However, in this response we will address only our concerns regarding the maintenance, abolition or reform of the bodies in question, leaving aside our views of the mechanism by which this is to take place. We comment only in relation to bodies whose abolition or amendment gives rise to serious concerns. Failure to comment on a proposal should not be taken for approval. None of the proposals in the consultation have any significant direct impact on JUSTICE.

Summary

4. **We do not oppose the abolition of the Administrative Justice and Tribunals Council since it is logical following the incorporation of the tribunals into HM Courts and Tribunals Service.**
 - **We oppose the abolition of HMICA and believe it is contrary to the consultation criteria to have consulted upon its abolition now when it closed in 2010;**
 - **We believe that the Chief Coroner should be appointed to carry out important functions under the Coroners and Justice Act 2009;**
 - **We believe that reforms to the governance of the youth justice system are necessary to ensure that children's rights are protected, whether or not the Youth Justice Board is abolished.**

Administrative Justice and Tribunals Council (AJTC)

Q1. What are your views on the proposed abolition of the AJTC?

Q2. Do you believe that there are any functions of the AJTC that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out above? Please state what these are and your reasons.

5. We believe that the abolition of the AJTC is logical in the light of the incorporation of the Tribunals Service into HM Courts and Tribunals Service.

Her Majesty's Inspectorate of Court Administration (HMICA)

Q10. What are your views on the proposed abolition of HMICA?

Q11. Do you believe that there are any functions of HMICA that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out above? Please state what these are and your reasons.

6. Following the abolition of HMICA, it is essential in order to comply with the UK's international legal obligations that the inspection of places of custody and detention within the courts estate is undertaken by HM Inspectorate of Prisons as part of the national preventative mechanism envisaged by, and in accordance with the requirements of, the Optional Protocol to the UN Convention against Torture. This is our primary concern in relation to the abolition of HMICA. We welcome confirmation in para 57 of the consultation that this will be the case, in addition to the proposal in para 56 to enable future joint criminal justice inspections by transfer of functions to the other criminal justice inspectorates. However, we have two other concerns regarding HMICA's abolition.

7. First, it is contrary to the consultation criteria printed on p37 of the consultation paper to be consulting on the closure of HMICA when it is already closed as of December 2010. The criteria state that '[f]ormal consultations should take place at a stage where there is scope to influence the policy outcome'. There is no realistic chance of so doing at this stage in relation to HMICA.

8. Secondly and substantively, we disagree with the notion that since HMTCS is an executive agency of the Ministry of Justice, no external independent oversight of its functions is needed. The independence, integrity and effective functioning of courts and tribunals is essential to guarantee substantive and procedural human rights and it is in our view insufficient that the body responsible for their management should only be accountable to ministers. We note the roles of Parliament (including the Public Accounts Committee) and the National Audit Office (NAO); however, the NAO is responsible for the inspection of public spending rather than of effective practice more generally, and in addition we understand that the NAO is to be abolished.¹ Parliamentary scrutiny cannot provide an effective alternative to a dedicated inspectorate. In these circumstances we oppose (retrospectively) the abolition of HMICA and believe that it should be reinstated.

The Office of the Chief Coroner

- Q14. What are your views on the proposed transfer of functions of the Chief Coroner to the Lord Chief Justice and the Lord Chancellor: in principle, and/or in relation to the particular functions detailed in Annex A?**
- Q15. What are your views on the proposed Ministerial Board and supporting Bereaved Organisations Committee?**
- Q16. Are there any functions of the Chief Coroner not adequately covered by the proposals above, in your opinion? Please explain your reasons.**

9. JUSTICE supported the establishment of the Chief Coroner and believes that a powerful and visible voice is necessary to drive up standards in the inquest system and to ensure that action is taken by government where necessary to avoid future deaths. We believe that important constitutional concerns are raised by the government's attempt to abolish an independent judicial office by means of secondary legislation under the Public Bodies Bill. We understand that the Bill will not now seek to abolish the office of Chief Coroner; however, it will instead transfer many of its functions to the Lord Chancellor and the Lord Chief Justice, and others will remain unfulfilled through failure to bring into force relevant provisions of the Coroners and Justice Act 2009.

¹ Press release from Department for Communities and Local Government, 13 August 2010.

10. We are particularly concerned that sections 36 and 40 of the Coroners and Justice Act 2009 will not be implemented under the government's plans. The implementation of s36 would have resulted the publication and laying before Parliament of an annual report in which the Chief Coroner could bring matters of importance to the attention of the Lord Chancellor, Parliament and the public. These would include an assessment of the consistency of standards between coroner areas (thus helping to establish consistency and allowing remedial measures to be taken in under-performing areas) and reports from senior coroners of actions necessary to prevent or reduce the risk of future deaths made to people who have the power to take such action (and the required responses to such reports). While senior coroners can continue to make such reports under Sched 5, para 7, and responses continue to be required to them, these will under the government's proposals be sent on to the Lord Chancellor rather than the Chief Coroner and, crucially, will not be made public nor laid before Parliament.
11. In our view publicity is crucial to provide an incentive for action on the part of those who can prevent/reduce the risk of future deaths and it is also essential that Parliament is aware of senior coroners' reports so that legislation can be proposed if it is necessary to prevent/reduce the risk of such deaths. There is a very strong public interest in such information being in the public domain. Indeed, it is a component of the duty to investigate deaths under Article 2 European Convention on Human Rights that there be a sufficient element of public scrutiny of the investigation.²
12. We are further concerned at the failure to implement the system of appeals to the Chief Coroner created by s40 Coroners and Justice Act 2009. While, as the consultation states, judicial review will continue to be available, this is a permissive remedy and not available as of right (unlike the s40 appeals). We believe that the creation of an appeal system as of right for interested persons would greatly enhance the integrity and quality of the coronial system and therefore believe that the Chief Coroner should be appointed to hear such appeals, as well as making reports under s36. If savings are required, they can perhaps be made through efficiencies rather than by failing to implement the central element of the structure envisaged by the 2009 Act. There will, of course, be great savings in human and monetary cost if unnecessary deaths are prevented and unnecessary judicial reviews do not take place as a result of the Chief Coroner's appointment.

² See *Isayeva v Russia* (ECtHR, App 57950/00, judgment of 24 February 2005)

The Youth Justice Board

- Q23. What are your views on the proposed abolition of the Youth Justice Board (YJB)?**
- Q24. Do you believe that there are any functions of the YJB that will not be adequately covered following the proposed abolition and suggested future handling of functions as set out above? Please state what these are and your reasons.**
- Q25. How do you believe that the Government can best ensure effective governance of youth justice in the future?**

13. We preface our comments on the future of the YJB by stating our view that the youth justice system in England and Wales is not compliant with the UK's international obligations in relation to children's human rights, including the UN Convention on the Rights of the Child. While many of the reforms necessary to ensure compliance need to take place in primary legislation, others can be accomplished executively and we believe that the YJB's record is mixed in this regard.
14. The YJB is, however, child-specific and this goes some way towards compliance with the requirement that there be a distinct and separate system for children in trouble with the law³. However, in order that the youth justice system fulfil its other obligation to treat each child 'in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society',⁴ we believe that the body responsible for youth justice within central government should involve officials of those departments responsible for children's health, development and welfare (in particular, the Departments for Education and Health) in addition to the Ministry of Justice. In this context, we regret the demise of the Joint Youth Justice Unit.
15. A further advantage of the YJB is the involvement of the Board itself, which is multi-disciplinary; we believe that the body responsible for youth justice should be advised

³ UNCRC, Art 40(3); UN Standard Minimum Rules for the Administration of Juvenile Justice, r2.3.

⁴ UNCRC, Art 40(1).

by a range of experts, including academics, practitioners and representatives of the voluntary sector, to ensure evidence-based policy, and that, in accordance with Article 12 UN Convention on the Rights of the Child, the views of children should be sought.

16. The YJB's functions are limited and it may be an advantage of integration into central government that youth justice policy decisions are taken within the same organisation as is responsible for the commissioning of services. This will only be the case, however, if a decision is taken at a high level to realise children's rights within the youth justice system, including by fulfilling the government's obligations to make custody a genuine last resort⁵ and to ensure that the small number of children who need to be in custody are in accommodation that is safe, compliant with international standards and that meets their needs.⁶

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September 2011

⁵ UNCRC, Art 37.

⁶ ECHR, Arts 2, 3, etc; UNCRC, Art 37(a) and (c); UN Standard Minimum Rules for the Administration of Juvenile Justice, rr26 and 27.