



Ministry  
of Justice

# **Annual Administrative Justice and Tribunals Performance Report, 2013-2014**

June 2014





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Presented to Parliament  
by the Lord Chancellor and Secretary of State for Justice  
by Command of Her Majesty

June 2014



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## Introduction

This is the first annual Ministry of Justice report on the progress of the Strategic Work Programme. Following the abolition of the Administrative Justice and Tribunals Council (AJTC) in August 2013 and the transfer of many of the AJTC's functions to the Ministry of Justice (MoJ), the Public Administration Select Committee (PASC) requested the publication of an annual report which would set out the progress the MoJ has made in the past year under the new arrangements. In this report, progress is measured against the commitments in the 2012 Strategic Work Programme for Administrative Justice and Tribunals:

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217315/admin-justice-tribs-strategic-work-programme.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217315/admin-justice-tribs-strategic-work-programme.pdf)

## Background

In December 2012, the MoJ published its Administrative Justice and Tribunal Strategic Work Programme for the period between 2013 and 2016. It sets out the Government's overarching objectives for reforming and improving the administrative justice and tribunal system. It aims to move away from structural reforms with instead an emphasis on achieving improvements for users and taxpayers.

As part of the Strategic Work Programme the decision was taken to abolish the Administrative Justice Tribunals Council (AJTC) on the basis that the functions performed by the AJTC could more properly be performed by the MoJ<sup>1</sup>. The AJTC was an advisory non-departmental public body with oversight of the tribunal system established by the Tribunals, Courts and Enforcement Act of 2007 to replace the Council on Tribunals. Its purpose was to help make administrative justice and tribunals more accessible, fair and effective by contributing to the development of good practice, promoting learning and continuous improvement and ensuring the needs of users remained central.

While acknowledging the contribution the AJTC has made to the wider agenda, the Government's decision reflected the changing nature of challenges in the administrative justice and tribunal system. The MoJ considered that oversight of administrative justice did not need to take place at arms' length from Ministers. Although expert advice is valuable, as the unified structure has developed there has been less need for a body like the AJTC.

The MoJ is better placed to influence other parts of Government to drive action and it therefore made more sense in terms of efficiency and practicality to have the same team developing policy and delivering it. Since the AJTC was only an advisory body with no power to enforce, implement or hold the Government to account, the MoJ feels it is in a better position to bring about improvements in the system by working directly with other departments and users of the system.

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<sup>1</sup> A list of commonly-used acronyms and abbreviations can be found at the end of this report on page 27.

## Structure and aim of report

The structure of this report broadly follows the six key headings of the Strategic Work Programme: governance; tribunals outside the unified system and new appeal rights; funding of tribunals; improving initial decision-making; enhancing proportionality; and maintaining a user focus. The report charts progress against the ten strategic objectives and the actions connected to each objective.

In reporting progress against these objectives, the report shows how the MoJ and its partners are delivering the Strategic Work Programme and its wider aims of making the tribunal system more accessible, transparent and efficient. The report also aims to show how the transferral of the AJTC's functions to the MoJ and HM Courts & Tribunals Service has added value to the oversight and development of the administrative justice and tribunal landscape.

The report covers the period between August 2013 and April 2014. Since the Strategic Work Programme runs until 2016, a number of objectives are long term and have not been fully realised. Where this is the case the report sets out progress to date.

## 1. Governance

The objectives under this heading aim to strengthen arrangements with other departments and public bodies to oversee the development and delivery of administrative justice and tribunal policy. They also aim to establish, encourage and maintain a user focus that supports open decision-making.

***Action: To strengthen bilateral arrangements with departments whose decisions lead to appeals and work with the devolved administrations to align processes across borders where necessary.***

### **Joint protocols with Government Departments and the Devolved Administrations**

The MoJ is committed to developing closer bilateral relationships with other government departments and with the devolved administrations. To this end, it has developed a set of protocols which provide a framework for closer co-operation with government departments and the devolved administrations. In particular, the protocols aim to underpin how the MoJ's relationships with these important stakeholders will help to ensure the development of a coherent and effective administrative justice system.

In addition to regular meetings with government departments and quarterly meetings with devolved administrations, the MoJ is aiming to agree end-to-end data sharing protocols with a number of government departments. As well as reporting progress against the Strategic Work Programme and wider departmental activities and priorities, the MoJ aims to work with government departments to provide improved data and analysis on the performance of a range of individual tribunals. These will include digital strategy, user intelligence and feedback from ombudsmen and complaint handlers. Finally, both the MoJ and government departments are working with the Administrative Justice Forum which was established in September 2012 to capture users' needs more effectively.

***Action: Work with the judiciary, Public and Health Service Ombudsman and other bodies in the administrative justice and tribunals system to identify and address performance issues.***

### **Public service ombudsmen and improving systems**

On 16 October 2013, the Minister of State for the Cabinet Office (Oliver Letwin) gave oral evidence to PASC. Following this, the Cabinet Office initiated two projects related to recent inquiries into Government complaint handling and the role of the Parliamentary and Health Service Ombudsman. These projects aim to:

- investigate how public services can make best use of complaints, ensuring complaints are welcomed as a valuable source of information about where improvements are required; and
- take a wider look at the role and powers of the public sector Ombudsmen, including consideration of a single public service ombudsman as recommended in the recent independent governance review of the Local Government Ombudsman service.

Both projects are being led by teams in the Cabinet Office, working with departmental contacts, and are in the early scoping phases at the moment. The MoJ is contributing to these projects through regular meetings with public sector ombudsmen and Cabinet Office colleagues. The MoJ also aims to make sure that the objectives in the Strategic Work Programme to identify performance issues and address them in partnership with the judiciary, the Public and Health Service Ombudsmen (PHSO) are reflected in the project plans.

The MoJ recognises the importance of ombudsmen in the administrative justice and tribunal landscape and is working with the Cabinet Office to ensure that innovation and new approaches can drive improvements through the system. The MoJ also recognises that it is important that the ombudsman service plays a central role in the development of an administrative justice and tribunals system which is less complex and makes more use of proportionate dispute resolution processes.

### **Cross Governmental Complaints Forum**

The MoJ is committed to the development of complaint-handling procedures and the use of such complaints as a feedback mechanism, signing the Complaints Resolution Standards Framework in 2013. This cross-departmental benchmarking tool aims to assist central government departments and other government bodies in demonstrating that they are implementing the ombudsmen's 2011 recommendations related to complaint handling procedures by government departments and other public bodies<sup>2</sup>. The framework provides a set of benchmarks against which government departments can assess compliance with complaints resolution standards. The MoJ also attends the meetings of the Cross Governmental Complaints Forum (CGCF) run by the Department for Work and Pensions (DWP). Bringing together a range of government departments and other agencies, this group aims to raise standards related to handling complaints across government and public bodies.

Complaint handling is an important part of the administrative justice and tribunal landscape. It allows the MoJ and HM Courts & Tribunals Service to identify systemic problems and trends and make changes to the issues driving the need for redress mechanisms before they escalate, as well as enabling the MoJ to anticipate future problems and mitigate them. The CGCF helps the MoJ to network, collaborate and exchange learning and ideas with government departments and public agencies on a range of complaint handling-related subjects. Moreover, the complaints handling framework has established a set of benchmarks around which complaints handling across government and the public sector can be measured.

***Action: Establish the Administrative Justice Advisory Group to support a user-focused approach to developing policy and identifying areas for improvement within the system.***

### **The Administrative Justice Forum**

The Administrative Justice Advisory Group (AJAG) was established in May 2012 and became the Administrative Justice Forum (AJF) following the abolition of the AJTC in August 2013. The name change coincided with the appointment of an interim independent chair, Jodi Berg, and aimed to avoid confusion with a pressure group with the same

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<sup>2</sup> [http://www.ombudsman.org.uk/\\_\\_data/assets/pdf\\_file/0014/13307/Responsive-and-Accountable-2011-screen.pdf](http://www.ombudsman.org.uk/__data/assets/pdf_file/0014/13307/Responsive-and-Accountable-2011-screen.pdf). Last accessed on 3 March 2014.

acronym. On 30 April 2014, following an open appointments process, Jodi was appointed as the permanent chair of the AJF. Membership of the AJF is drawn from a range of bodies which are active within the system, including organisations which represent the users.

The AJF is an independent body with oversight across the administrative justice and tribunals system. It gives members the opportunity to share viewpoints and ensure there is appropriate challenge to policy makers from the perspective of users and practitioners within the administrative justice system. The AJF acts as an expert group in which to test policy as it develops. One of its strengths is that it comprises a range of people who have direct contact with and can represent the views of those individuals who want to seek redress against decisions made by the state, including users and tribunal judiciary – whether through departmental complaints processes, adjudicators, ombudsmen schemes or tribunals.

The forum's aims are:

- To gauge how the administrative justice and tribunals system is working, and identify any areas of concern or good practice; and
- To provide early, informal testing of policy initiatives.

Although the AJF keeps a broad overview of the system as a whole, it focuses its main activities on issues in relation to which it can make the most impact for the least cost. To this end, the AJF has planned a series of wider forum debates and round table events at which issues can be explored in more depth. The first round table event took place in May 2014 and concerned receiving, giving and acting on feedback.

The AJF (AJAG as was) met for the first time in May 2012 and holds bi-annual meetings with additional wider discussions and sub-group meetings focusing on particular areas of interest. To date there have been five full Group/Forum meetings and one sub-group meeting. Meetings have focused, in particular, on improving initial decision-making, user signposting and feedback mechanisms. The forum takes a close interest in developments such as the reform of Judicial Review consultation.

***Action: Hold targeted policy sessions with academics, representative groups and other interested parties on priority issues.***

### **Nuffield Foundation seminar series**

The MoJ is supporting the Nuffield Foundation in an advisory capacity in the establishment of a virtual research hub. The Foundation has invited institutions with an interest in administrative justice research to apply for up to £250,000 in funding for a period of three years to establish the hub. The research hub aims to strengthen links between policy, operational and research communities and increase information sharing; stimulate new interdisciplinary work; and identify and tackle capacity constraints in undertaking empirical research on administrative justice issues<sup>3</sup>.

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<sup>3</sup> Virtual hub for administrative research and development, 18 December 2013: <http://www.nuffieldfoundation.org/news/virtual-hub-administrative-justice-research-and-development>. Last accessed 1 April 2014.

Analysts and researchers from MoJ's Analytical Services Directorate as well as the chair of the AJF have agreed to sit on the virtual hub's advisory group which will oversee the development and delivery of the virtual hub. The advisory group has suggested that the information sharing plans and, in particular, the plans to communicate information about new research might be enhanced through the development of an interdisciplinary seminar series. This would provide members of the hub with an opportunity to test and challenge the information or research being disseminated, thereby embedding shared learning. By bringing existing research and analysis together, the research hub will not only make an important contribution to increasing the MoJ's understanding of administrative justice and tribunal users but also help to widen its range of expertise, both in the UK and internationally.

## 2. Non-HM Courts & Tribunals Service Tribunals and new appeal rights

The objectives under this heading aim to prioritise tribunal transfers into the unified structure on a cost/benefit basis and to maintain oversight of those tribunals that remain outside of the system. It also aims to ensure that new appeal rights created by Government are fair, efficient and accessible.

***Action: Oversee the performance of tribunals that remain outside the unified system ensuring consistency with the three key principles of fairness, efficiency and accessibility***

### Oversight of non-HM Courts & Tribunals Service tribunals

A priority for the MoJ is to maintain oversight of the tribunals that are outside the unified system and consider whether or not specific tribunals should be transferred into the unified structure where there are arguments for improving efficiency, proportionality or access to justice. Where there is a compelling case, the MoJ will include transfer work streams in its business plans.

We have developed a programme of visits to gain more information about the individual ethos, performance and efficiency of the tribunals. The visits also enable the Tribunals Transfer and New Jurisdictions Team (TTNJT) in the MoJ to gain an overview of good practice so that where areas for improvement are found suggestions can be made about ways to bring about change. To date, the TTNJT have made 5 visits to the following tribunals outside of the unified system:

- Solicitors Disciplinary Tribunal;
- Road User Charging Adjudicators;
- Valuation Tribunal England;
- Department of Education – Office of the Schools Adjudicator; and
- National Health Service Appeals Unit.

The visits have highlighted the very different operational models in tribunals outside HM Courts & Tribunals Service and we have identified examples of good practice – for example, the innovative use of information technology.

### RUCAT and the use of technology

The Road User Charging Adjudicators' Tribunal (RUCAT) is an example of an independent tribunal which makes extensive use of information technology, ensuring that appeals are dealt with quickly and efficiently. RUCAT decides appeals against the Congestion Charge and Low Emission Zone penalties in London and disposes of around 7000 cases a year. From the outset the tribunal was designed to be paperless with appeal documents held electronically and the adjudicator entering the decision directly into the system.

All paper appeal forms are scanned onto the system, given a case number and sent electronically to RUCAT by Capita staff. Once appeals are put onto the system, they are queued in a list and, if a case is to be determined without a hearing, adjudicators take the next one on the list. They make their decision based on the information on the screen and use the screen to make decisions quickly by using templates of examples potential reasons which can be cut and pasted as necessary.

The Chief Adjudicator is able to use the system to gain a wide range of management information and is able to look at how long adjudicators are taking to decide cases and monitor adjudicators' decisions. This helps to identify any training needs and ensure consistent high standards are maintained. Future plans include developing an online form so that users can send their appeal electronically to Capita where it can be uploaded onto the system rather than having to input manually.

***Action: Examine and prioritise the costs/benefits of bringing tribunals still outside the unified structure into the system and incorporate into the MoJ business plan accordingly.***

### **The Valuation Tribunal England**

The TTNJT visited the Valuation Tribunal Service (VTS) and Valuation Tribunal England (VTE) on 19 December 2013. The team found the VTE to be an efficient, well-run organisation with a number of good practices and procedures which could be shared with other tribunals administered by HM Courts & Tribunals Service. The VTS management team have achieved significant savings through the rationalisation of premises, the effective listing of cases and by reviewing their use of information technology. Feedback from users is obtained through user surveys and is used to make improvements to the service; a user group also regularly meets to discuss the impact of new legislation and to consider any concerns about the process of service. Clear and comprehensive guidance in a range of formats and languages is available on the VTS website together with listings of hearings and decisions, statistics and practice directions.

The chairman and members of the VTE who hear the cases are lay members who have a wide range of experience and are from a variety of backgrounds.

***Action: Create a "gateway" to review and aid the development of new rights as they arise in Government***

### **New Appeals Gateway Guidance**

The TTNJ team have developed the New Appeals Right Gateway Guidance for reviewing and handling new appeal rights, developed as part of wider policy development across government. The guide clarifies the process of setting up a new appeal right, identifies the roles and responsibilities of the MoJ and the government department or organisation sponsoring the policy for the new appeal right, and raises awareness of the impact of a policy proposal on the wider justice system.

The New Appeals Right Gateway ensures that the MoJ is involved in policy development at the earliest opportunity. Early contact is paramount when considering introducing a new appeal right as there will be cost implications, judicial recruitment and training and the commissioning of administrative and information technology processes to deliver the appeal

right. The team carry out an initial scrutiny of the process and challenge whether setting up an appeal to the unified tribunal system is appropriate, considering if initial decision-making process could be improved and what alternatives for redress are available.

The next step requires the sponsoring government department or organisation to provide information in relation to implementation timescales; expected number of appeals; the tribunal panel composition and which chamber within the unified tribunal structure is most appropriate for dealing with the appeals; and agreeing funding for the appeal right until the next Government spending review.

The New Appeals Right Gateway form has been in circulation since July 2013 and has been successfully utilised by a number of government departments, including the Department for Transport, the Department of Energy and Climate Change and the Department for the Environment, Food and Rural Affairs.

### 3. Funding of Tribunals

The objectives under this heading aim to scope, develop and implement clear, evidence-based tribunal funding and fees models to reduce demands on the tribunal system. The key actions are to:

- Scope new funding/fee models where appropriate, building accurate information on the full cost of appeals – from initial decision to the end of the tribunal process.
- Develop and test various funding and charging options against this data, and identify where funding needs to be altered.
- Implement new models with HM Treasury, Government Departments and HM Courts & Tribunals Service where appropriate.

Tribunals are central to enabling people to challenge the decisions of government departments, public bodies and a range of other organisations where the individual feels they are incorrect. Ensuring independence from initial decision makers is maintained and that avenues to appeal are accessible is crucial to this. However, in the current financial climate these aims need to be balanced against the need to look carefully at whether the current fees and funding arrangements provide the best means of achieving value for money for the taxpayer and whether they adequately incentivise proper use of the tribunal.

Fees have been introduced in the Property Chamber as well as two of the most high-volume chambers: Employment and Immigration and Asylum. At the same time, a system of remissions remains in place for those unable to afford tribunal fees.

#### Property Chamber

The First-tier Tribunal Property Chamber deals with a range of applications and appeals relating to disputes over land and property. It was established on 1 July 2013 and brought together the Rent Assessment Committees, Leasehold Valuation Tribunals, Residential Property Tribunals, Rent Tribunals, Agricultural Land Tribunals and the jurisdiction of the Adjudicator to HM Land Registry within the unified tribunal structure.

The First-tier Tribunal (Property Chamber) Fees Order 2013 came into effect on the same day, providing the power to charge fees for certain proceedings before the chamber. This incorporated fees already charged in the Residential Property Tribunal Procedures and Fees (England) Regulations 2011 and the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003, with a cumulative inflationary increase applied to each fee.

The Department for Community and Local Government's Mobile Homes Act 2013 provided for a number of provisions for the Property Chamber which are gradually being introduced. The First-tier Tribunal (Property Chamber) fees (Amendment) Order 2014 introduced some of these provisions in February 2014. Further reforms are due to follow once the Transfer of Tribunal Functions (Mobile Homes Act 2013 and Miscellaneous Amendments) Order 2014 comes into force.

## **Employment Tribunal & Employment Appeals Tribunal**

Fees were introduced in the Employment Tribunal (ET) and Employment Appeal Tribunal on 29 July 2013 as a result of The Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013. ACAS conciliation remains in place to help parties resolve disputes free of charge before they reach the tribunal. Improved equality data on claimants is being collected to assist with future reviews of these fees.

The purpose of introducing fees is to transfer some of the annual £74m cost of the ET to those who use the tribunal where they can afford to pay. A scheme of fee remissions is available for those who qualify so that those who cannot afford to pay the fee are not prevented from accessing the tribunal; the tribunal has the power to order the unsuccessful party to reimburse the fees paid by the successful party.

Unison brought a judicial review on the policy of charging fees for ET cases. The claim was dismissed in February 2014 on all grounds. Unison has subsequently sought, and been granted, permission to appeal to the Court of Appeal on one of the grounds. A separate judicial review was issued in Scotland which is currently stayed.

## **Immigration and Asylum Chamber and Upper Chamber**

Fees were introduced to the First-tier Immigration and Asylum Chamber (IAC) in December 2011. Most appeals to the first-tier require the payment of a fee, but in certain circumstances fees are not chargeable – for example, where the appellant is facing imminent removal from the UK; where the appellant is in receipt of asylum support; or where the appellant is a child in the care of a local authority. There is a limited fee remission scheme, used in exceptional circumstances, for those who can demonstrate they are unable to afford the fee.

When they were introduced fees were set at a level to achieve 25% cost recovery. In 2012/13, around £10 million was generated through fee income. The MoJ keeps the fees charged in the Immigration and Asylum Tribunal under review.

## **Tribunal Fees Strategy**

As part of the wider Administrative Justice strategy, the Government is committed to reviewing the funding of tribunals, including the scope for introducing charges for those who bring cases before the tribunals. Initial scoping work is underway and any reforms we wish to make will be brought forward in due course.

## 4. Improving initial decision-making

The objectives under this heading aim to gather good quality end-to-end performance data to help improve initial decision-making and ensure information is made available to enable improvements in the quality of initial decision-making.

***Action: Establish reliable data on volumes of decisions, including those not challenged, and the costs associated with the entire process.***

***Action: Use information to identify potential systemic issues and inform targeted action, working with decision-making bodies, HM Courts & Tribunals Service and judiciary to identify where resource can be invested for improvements to the system.***

### End-to-end data

Working with other departments, the MoJ is currently conducting a feasibility study related to the production of end-to-end performance data. The data we are seeking to collect will illustrate the time taken between a government department making a decision and an appeal being lodged, right through to a final determination by a tribunal. This will help us better understand the length of the entire appeals process and help to identify possible inefficiencies. The study will report back in due course, considering how end-to-end data could be used to identify and address systemic issues in partnership with decision-making bodies, HM Courts & Tribunals Service, the judiciary and other stakeholders.

MoJ Analytical Services produces a quarterly performance report for Administrative Justice and Tribunals. The latest performance report is for October-December 2013 and can be found at <https://www.gov.uk/government/publications/tribunal-statistics-quarterly-october-to-december-2013>.

***Action: Work with initial decision makers, HM Courts & Tribunals Service, the judiciary and users to identify potential improvements to feedback mechanisms.***

### Feedback mechanisms in the AJF

As noted earlier, the AJF has been working to improve feedback mechanisms and ensure they are used more effectively. Given the importance of feedback mechanisms in introducing systemic improvements for the benefit of users, AJF members agreed that a debate on the subject would be useful. They identified ombudsmen and complaint handling organisations as having developed robust feedback mechanisms. AJF members found that there was a disparity in how various tribunal jurisdictions provided feedback to departments and agencies and to what extent information was being used effectively to improve services.

With these goals in mind, the AJF, the MoJ, and the Ombudsman Association organised a round table event in May 2014. The event included academics, judges, voluntary sector representatives and others who have a keen interest in feedback mechanisms. Speakers included the Senior President of Tribunals, Sir Jeremy Sullivan; Michelle Dyson from the

Department for Work and Pensions; and Elfyn Llwyd MP representing the Justice Committee. One of the aims of the event was to think about ways to offer appropriate challenge to governmental organisations about their use of feedback in formulating policy and practice, and to ensure that improvements to feedback mechanisms can be reflected in guidance to initial decision makers. The findings from this event will be shared with the wider administrative justice community.

***Action: Assess existing feedback mechanisms in priority areas with a view to establishing best practice and implement and assess new feedback pilots with a view to further roll-out.***

The MoJ and HM Courts & Tribunals Service have been working with a number of government departments which have responsibility for individual tribunals on pilot schemes to improve their feedback mechanisms in order to inform better initial decision-making. These include working on the Special Educational Needs Tribunal with the Department for Education, and on the Property Chamber with the Department for Communities and Local Government. The most significant reform in this area, however, has taken place in the form of two initiatives in the Social Security and Child Support (SSCS) Tribunal with the DWP: summary reasons, and mandatory reconsideration.

The SSCS Tribunal is the highest-volume tribunal in the HM Courts & Tribunals Service system and the aim of both the mandatory reconsideration and summary reasons initiatives is to contribute to the development of improved decision-making processes.

### **Mandatory reconsideration**

With support from the MoJ, DWP has recently reformed its appeals process to enable more disputes to be resolved without referral to HM Courts & Tribunals Service. An escalating dispute process called mandatory reconsideration has been introduced. A mandatory reconsideration must take place before an onward appeal to the tribunal can be made. This ensures that initial decisions are looked at thoroughly again where they are challenged and that claimants have every opportunity to provide new evidence to support their claims earlier in the process. The objective is to resolve disputes as early as possible and avoid unnecessary appeals. The reforms also require appeals to the tribunal to be lodged directly with the HM Courts & Tribunals Service, rather than through DWP, making the system more efficient as well as more obviously independent from the decision-making body.

As part of these reforms, the DWP has agreed to the request of the Tribunal Procedure Committee (TPC) for the introduction of a time limit in relation to the return of appeal responses to HM Courts & Tribunals Service. The TPC argued that time limits would improve customer service by giving a clear timeframe within which DWP expects to process the response to an individual appeal. For benefits cases, the time limit has been set at 28 calendar days; for child maintenance cases, the time limit is 42 calendar days. The DWP is currently operating against these timescales and will begin to report against them from October 2014 when they formally commence.

The mandatory reconsideration scheme which was introduced for Personal Independence Payment (PIP) and Universal Credit in April 2013 has also recently been extended to other DWP-administered benefits, including Employment and Support Allowance (ESA), and child maintenance cases where decisions were made on or after 28 October 2013.

## Summary reasons

In the SSCS tribunal, a significant number of appeals are being upheld in relation to ESA and Disability Living Allowance (DLA) appeals. According to the latest quarterly tribunal data from October-December 2013, 40% of these cases were upheld, an increase of 2% compared to the same period in the previous year<sup>4</sup>.

Since 2012, the DWP has been working with HM Courts & Tribunals Service and the MoJ to better understand what is driving the high rate of successful appeals. Beginning in June 2013 HM Courts & Tribunals Service, working closely with the DWP, introduced – on a “controlled start” basis – summary reasons against ESA decisions where the Tribunal upheld or overturned the Department’s decision. The summary reasons take the form of written text which is incorporated into the decision notice issued by the Tribunal. It explains why the Tribunal panel upheld the appeal and is provided both to the appellant and the DWP.

Early indications are that this initiative appears to have been a success. Although it was initially carried out for four tribunal sites on ESA appeals only, this has now been implemented across all tribunal venues. As well as making a good start in implementing this initiative, analysis of the summary reasons in the “controlled start” sites revealed areas where the DWP’s approach to decision-making and handling of appeals can be strengthened.

The summary reasons initiative has demonstrated the value of understanding how and why judges come to decisions in SSCS Tribunal appeals and the value of feeding this information back to decision-makers to inform improvements in processes. The MoJ and the DWP will continue monitoring the initiative and will aim to use the knowledge gained to inform how feedback might be better used in other parts of the system.

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<sup>4</sup> Tribunal Statistics Quarterly, October-December 2013 (Ministry of Justice: 13 March 2014): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/289342/tribunal-stats-oct-dec-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/289342/tribunal-stats-oct-dec-2013.pdf), 13. Last accessed on 13 March 2014.

## 5. Enhancing proportionality

The objectives under this heading aim to develop and promote early and proportionate dispute resolution across Government.

***Action: Draw together existing information on proportionate dispute resolution techniques into framework.***

### **Proportionality toolkit and good practice examples**

MoJ officials are currently in the process of drafting a good practice paper and toolkit for policy and operational administrative justice and tribunal staff. The paper and toolkit, which includes a management performance checklist, aim to help staff to develop policies and practices which promote proportionality and make the system more efficient and responsive to the needs of users. Once they are completed, the documents will be shared with other government departments and governmental agencies in order to assist with policy making and operational design.

The first part of the toolkit concentrates on the pre-hearing stage. It looks at the initial decision-making processes of government departments, examining how improving initial decision-making might contribute to reducing the number of claims unnecessarily proceeding to hearing. The second part looks at proportionate dispute resolution pilots and initiatives in the tribunal system which are providing a sustainable and effective alternative to lengthy, expensive and stressful hearings. The two parts of the toolkit assess the impact of these pilots and initiatives and identify where they could be extended. These themes will play an important part in improving the efficiency and usefulness of the service offered to users.

***Action: Further develop mapping factors with initial decision makers, HM Courts & Tribunals Service, the judiciary and users to identify potential for pilots to test new models of introducing proportionate dispute resolution (PDR) into the system***

***Action: Implement and assess PDR pilots and share best practice***

In the past few years, the MoJ and HM Courts & Tribunals Service have worked with a number of tribunals in the development of pilots and initiatives aimed at promoting proportionate dispute resolution (PDR) approaches as an alternative to tribunal hearings. PDR approaches that have been piloted or mainstreamed have ranged from judicial mediation in the Residential Property Tribunal and Land Registration and Early Neutral Evaluation in the SSCS Tribunal to delegated judicial functions in the Special Educational Needs and Disability (SEND) and Tax and Lands Chambers.

The most recent examples of PDR approaches in tribunals supported by HM Courts & Tribunals Service and the MoJ have included the introduction of a mediation process in the SEND Tribunal and early conciliation in the Employment Tribunal. Both these initiatives aim to reduce the volume of unnecessary, stressful and expensive tribunal hearings and ensure that parties reach a fair and sustainable resolution as speedily as possible.

## **Mediation processes for Special Educational Needs**

The Children and Families Act 2014, which will come into effect on 1 September 2014, reforms the legal framework for children and young people with special educational needs (SEN). Included in the Act are new mediation arrangements for parents and young people registering appeals with the First-tier SEND Tribunal. The Act replaces the current SEN assessments and SEN statements – which are the subject of appeal to the Tribunal – with Education, Health and Care (EHC) plans.

Under the Act, before a parent or young person can register an appeal with the Tribunal against a local authority regarding a refusal to assess or draw up a plan or to challenge the special educational element of an EHC plan, they must contact a mediation adviser and choose whether they want to register their appeal or go to mediation first and decide after that whether to appeal. The Act also allows parents and young people to go to mediation about the health and social care elements of the plan. However, they will not be able to appeal those elements of the plan to the Tribunal.

In the academic year 2012-13 only 24% of registered SEN appeals were decided by the SEND Tribunal, the rest being either conceded by local authorities or withdrawn by parents. The new mediation arrangements offer the opportunity for disagreements between parents or young people and local authorities which can be resolved at the local level to be removed from the current 3,600 registered appeals each year. This will result in a saving on administrative time in registering appeals which are often not heard. It will also allow judicial resource to be focused on appeals which need to be heard rather than on appeals that never make it to the hearing stage as often happens at present. In addition, it will offer the opportunity, where disagreements cannot be resolved at the local level, to highlight the key issues of the disagreement so that if the case is registered with the Tribunal, it can be dealt with more efficiently.

## **Early conciliation in the Employment Tribunal**

Taking employment disputes to tribunal can be stressful and expensive and the Government believes that too many cases still proceed to tribunal unnecessarily. Since April 2014, those seeking to make an ET claim against a former employer have been required to contact the conciliation service ACAS before making an application to the ET. A party (the employee) seeking to lodge an ET claim has to notify ACAS first. ACAS then has a month to resolve the dispute with a possible extension of two weeks if a successful conciliation seems likely. An employee's Limitation Period (time to lodge an ET claim) is frozen during this period.

While the requirement for prospective claimants to contact ACAS before they can lodge proceedings at the ET is mandatory, the decision about whether to accept mediation is entirely voluntary. Prospective claimants who do not want to attempt to settle the matter outside of the tribunal are able to decline early conciliation and proceed to lodge their claim. Prospective respondents are also able to refuse early conciliation.

While there are some complex employment cases which generally need to proceed to tribunal, there are many cases which can be dealt with more efficiently and less stressfully through conciliation or mediation. Evidence commissioned by ACAS on their Pre-Claim

Conciliation service and the use of early conciliation support officers indicate that employers and employees are benefiting from early intervention into workplace disputes<sup>5</sup>.

A recent evaluation of Pre-Claim Conciliation found that nearly nine out of ten employers who used it said that they would do so again; in addition, two thirds of employees would advise a friend or relative to use it if they were involved in a similar dispute. For their part, service users reported that the Pre-Claim Conciliation service was cheaper, easier or more convenient, less traumatic or stressful and resolved their issue more quickly than submitting an employment tribunal claim<sup>6</sup>.

The MoJ has been supporting the introduction of the early conciliation initiative through its membership of the early conciliation project board in partnership with ACAS, HM Courts & Tribunals Service and the Department for Business, Innovation and Skills (BIS). As well as being an example of effective joint working between the MoJ, other government departments and public sector bodies, the development of the early conciliation scheme will add value in promoting a more proportionate approach to resolving employment disputes. Widening the opportunity for employment disputes to be settled outside the ET will allow the ET to focus resources on those cases which require a hearing.

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<sup>5</sup> <http://www.acas.org.uk/index.aspx?articleid=4426>. Last accessed on 26 February 2014.

<sup>6</sup> Evaluation of the Introduction of a Conciliation Support Team for the Pre-Claim Conciliation Service (13 May 2013; TNS BMRB): <http://www.acas.org.uk/media/pdf/o/a/Evaluation-introduction-conciliation-support-team.pdf>. Last accessed on 19 February 2014.

## 6. Maintaining a user focus

The objectives under this heading aim to develop improved information on administrative justice users to inform work on each strand of the strategy and to ensure our communications encourage efficiency, support fairness and allow accessibility in the system.

***Action: Consolidate the information currently gathered from sources such as jurisdictional user, 'Lean' exercises carried out by HM Courts & Tribunals Service and complaints processes***

### **Improving services to Special Educational Needs Tribunal users**

In order to address the significant number of cases being withdrawn at hearing stage and to improve the service offered to users, in January 2012 the SEND Tribunal launched an efficiency pilot with two local authorities. The SEN Tribunal team used established Lean techniques to review the end-to-end SEN process from the initial handling of the SEN application by the local education authorities (LEAs) through to the appeal stage which stood at 48 weeks.

This was considered to be too long for a child to wait for the outcome of the SEN application and appeal. The MoJ SEN team worked with parents, local authorities (LAs) and parent representative groups to help the team understand concerns and identify potential for improvements, producing a process map which offered a more efficient service for users of the tribunal. The team wanted to ensure that they provided the best possible service to stakeholders while ensuring children's needs were always fully considered.

A number of initiatives were developed. One initiative introduced improved training for health care professionals, head teachers and school SEN officers, all of whom have early contact with parents of children with SEN. Another initiative aimed to improve the quality and frequency of communication with parents from the outset of the process and introduced new multi-agency meetings at set points within the LEA process: parents, schools and LAs worked together to consider the Tribunal decision, exploring alternative options together. This helped to break down barriers between parents, LAs and schools. A third initiative shortened the timescale for dealing with appeals by the SEN Tribunal.

The reforms have been well received, gaining the support of senior management in HM Courts & Tribunals Service and the Department of Education (DfE). The LAs have also been supportive of the initiatives. The team has reduced processing times from 48 to 30 weeks and they are aiming to reduce this further in the 25 weeks in the future<sup>7</sup>. The initiatives have the potential to contribute to a more sustainable and efficient decision-making process in which parents feel fully engaged and to improve communication between parents and decision makers. In the context of the number of appeals which are withdrawn at hearing stage and the dissatisfaction with LA decisions by some parents' groups, this pilot could also result in significant savings in the SEND Tribunal.

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<sup>7</sup> <http://intranet.justice.gsi.gov.uk/news-features/mojazine/2013-12-11b.htm>. Last accessed on 7 March 2014.

While this is clearly an example of good practice, in order to consolidate information about a broader range of efficiency initiatives, we are currently seeking to determine whether lessons can be learnt elsewhere and whether we can draw together examples of successes like these to inform wider improvements.

***Action: Identify gaps in user insight and prioritise research and surveys***

**Cross-governmental research**

The MoJ's remit in the administrative justice area has considerable overlap with that of other government departments. In most cases, users go through another government department's decision-making processes before a decision is made to seek redress through the tribunal system. As such, there are considerable opportunities and added value in working collaboratively with other analysts in government to improve our understanding of tribunal users, their journey and motivations in seeking redress through the tribunal system. We are engaging with analysts in other government departments including BIS, DWP, the Home Office and DfE to identify opportunities for joint analytical work relating to tribunal users and to input into their existing research work.

One such example is our work with BIS where MoJ social researchers sit on the steering group and provide input to the Survey of Employment Tribunal Applications (SETA). This survey seeks to provide information on the characteristics of claimants and employers in ET cases, and their experiences, outcomes and attitudes towards the ET system. There are six previous surveys in the series dating back to 1987, with the latest due to report in spring 2014.

There remain several evidence gaps in the administrative justice area relating to users. As discussed above, we are currently working with the Nuffield Foundation on a proposal to fund a virtual hub for administrative justice. The aim of the hub is to improve and expand the empirical evidence base on administrative justice and to act as a central coordination point for research activities in this field. The tendering process has now closed and the Nuffield Foundation will be making an announcement about the result shortly.

**Independent review panels and the SEND Tribunal**

The MoJ and HM Courts & Tribunals Service have also been supporting research commissioned by DfE to compare users' perceptions about independent review panels (IRPs) established in September 2012 and the expanded remit of the SEND Tribunal for parents appealing their child's permanent exclusion from school. The role of the IRP is to review the decision of the governing body to exclude a child permanently. It can direct or recommend that the governing body reconsider its decision to uphold a permanent exclusion and ask for its comments to be added to the individual child's record although it has no power to reinstate a permanently-excluded child. From September 2012, the remit of the SEND Tribunal was also expanded to include claims of disability discrimination that relate to permanent exclusions. Prior to this the FtT could only consider claims relating to fixed period exclusions.

A recent evaluation by researchers at Sheffield Hallam University of IRPs and the First-tier Tribunal was unable to draw conclusions about the use of the SEND Tribunal due to the very small number of claims made during the course of the research. However, in relation to IRPs, the evaluation found that most parents described the appeals as fair in terms of process; most complaints of unfairness were related to a belief that they were not allowed

their desired outcome. By contrast, school authorities felt the process was fair but that the school was more harshly scrutinised than the family. Most participants felt that they were given the opportunity to have their say; the organisation of the hearing was also praised. Furthermore, panel members were generally viewed as professional and suitable<sup>8</sup>.

These kinds of research projects demonstrate the value in strengthened working between the MoJ and other government departments. Through providing a better insight into tribunal users' perceptions, the MoJ is able to measure to what extent proportionate dispute resolution approaches are providing a sustainable and fair alternative to formal tribunal hearings. They might also play a role in making tribunal processes more proportionate and accessible. In addition, they allow the MoJ to anticipate future challenges and problems and mitigate them.

***Action: Review the information currently available to users of the administrative justice and tribunals system and implement changes in line with the MoJ digital strategy.***

The MoJ recognises the need to place tribunal users at the centre of the system and it is committed to ensuring that information and guidance provided to users is accessible, easy to understand and, wherever possible, in digital format. MoJ Digital Services has been working to fulfil its "digital by default" strategy; through its user signposting subgroup, AJF is helping Digital Services think about how best to address the needs of users.

### **AJF user signposting subgroup**

The work of the AJF to develop guidance which is more accessible and clearer is being supported by MoJ Digital Services. At the start of the project, Digital Services outlined the Government's Digital Strategy (GDS) including the "digital by default" principle and the transition to the new GOV.UK website. Digital Services and the AJF assessed the content related to tribunals on the MoJ website thinking about how best to address the needs of users in the transition to the GOV.UK platform. The MoJ provided a paper setting out the details of online guidance from the justice.gov.uk website and the subgroup discussed what information was most useful for service users and what other information or guidance sources are used by their own organisations.

A sub group was formed to look at the issue of user guidance and signposting, with the first meeting held in September 2013. The sub group is linked up with an HM Courts & Tribunals Service steering group comprising judicial representation, the Judicial Office, the MoJ, HM Courts & Tribunals Service communications and operational delivery. The steering group is managing the migration of tribunal data and information to GOV.UK. The AJF subgroup will be testing this guidance, assessing it in terms of user accessibility, targeted messaging and understanding.

The work of the AJF to improve online guidance and signposting should help to enable applicants to navigate online information more effectively. It will help users understand better what they need to provide at each stage of the application process.

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<sup>8</sup> Claire Wolstenholme, Mike Coldwell et al, Independent Review Panel and First-tier Tribunal Exclusion Appeals systems: Research report (Centre for Education and Inclusion Research, Sheffield Hallam University, July 2013): <https://www.gov.uk/government/publications/irp-and-first-tier-tribunal-exclusion-appeals-systems>. Last accessed on 7 March 2014.

***Action: Continually improve the information provided to users in partnership with other Government departments to ensure that it properly reflects policy changes and improved user insight.***

Providing improved user guidance to tribunal users which reflects policy changes and user insight is crucial to ensuring that users are able to navigate the administrative justice and tribunals system effectively and make informed choices about how to reach the right decision speedily and cheaply. It contributes to the development of a more efficient and proportionate administrative justice and tribunals system and, by ensuring that users get the right information, increases accessibility.

### **Improving user guidance for enforcement of Employment Tribunal awards**

HM Courts & Tribunals Service and the MoJ are working to improve guidance for successful applicants seeking to enforce ET awards. Currently, the ET is not responsible for enforcing its own awards. Claimants who do not receive an award from the respondent can pursue enforcement action by using the ACAS and ET Fast Track service; alternatively, they can pursue enforcement through the County Court. In Scotland, enforcement action is undertaken by the Sheriff Officer.

Information on enforcement is provided in an ET booklet "The Judgment" which parties are referred to when a judgment is issued. The leaflet provides information on enforcing an award and also signposts claimants to the relevant County Court booklets. HM Courts & Tribunals Service has sought to improve the guidance provided in a number of ways so that claimants are aware of the enforcement process and how to take action if they need to do so.

Every judgment issued by a tribunal office is accompanied by a covering letter. HM Courts & Tribunals Service is planning to redraft the letter to ensure parties are aware that information concerning enforcement is available in the judgment booklet. A review of online guidance is being undertaken and additional information, directing users to the location of information about enforcement, has been included. As well as providing guidance at the end of the tribunal claim process, HM Courts & Tribunals Service is considering whether details about enforcement could also be included in guidance that parties are referred to at the start of a claim and during the life of a claim.

### **SEN new code of practice**

The Department for Education will be publishing a new SEN Code of Practice to come into effect in September 2014 which will reflect the changes to the SEN framework brought about by the Children and Families Act<sup>9</sup>. The Code will include a chapter on resolving disputes, setting out information for young people, parents and professionals about the complaints and redress mechanisms available to them. In addition, links will be provided to further information on the various complaint and redress systems. The information will help parents and young people to choose the right complaint or appeal process for their purposes and so reduce waste by decreasing unsuccessful attempts to initiate complaints using procedures which are unsuitable.

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<sup>9</sup> This Code of Practice provides statutory guidance on duties, policies and procedures relating to Part 3 of the Children and Families Act 2014 and associated regulations. It relates to children and young people with special educational needs (SEN) and disabled children and young people.

The Code will be supported by plain English summaries for young people and parents, including plain English information on resolving disagreements. Access to the appropriate complaints or appeals procedures will also be facilitated through information, advice and guidance services which will be able to give parents and young people advice on using the various procedures.

In addition, a “local offer” published by each local authority in England will be required to include information on resolving disagreements, mediation and parents’ and young people’s right to appeal to the Tribunal. It is hoped that this information will improve accessibility to the system.

## 7. Looking ahead

The MoJ has identified a number of priorities for the coming year related to the Strategic Work Programme. These will be reported on in next year's annual performance report and the highlights are set out below.

- The MoJ will continue supporting those government departments with responsibility for individual tribunals to make the administrative justice and the tribunals system more proportionate.
- The MoJ aims to continue to develop its working relationship with other government departments and research bodies such as the Nuffield Foundation to better understand those who use the system, their expectations and motivations.
- The MoJ will work with other government departments to complete work on end-to-end tribunal data. By understanding the complete journey of those using tribunals we will not only be able to identify where improvements are needed to tribunal processes, but also where improvements could be made in initial decision-making processes.
- The MoJ will continue to work with other government departments, the AJF and Digital Services to ensure that information is more accessible and better targeted to the needs of users.
- The administrative justice and tribunals performance report for 2014-2015 will report on a number of tribunals outside the HM Courts & Tribunals Service system.
- The 2014-2015 report will aim to report on the latest progress from the range of initiatives outlined in this report.

## 8. Acronyms and abbreviations

AJAG – Administrative Justice Advisory Group

AJF – Administrative Justice Forum

AJTC – Administrative Justice and Tribunals Council

BIS – Department for Business, Innovation and Skills

CGCF – Cross Governmental Complaints Forum

DCLG – Department for Communities and Local Government

DfE – Department for Education

DLA – Disability Living Allowance

DWP – Department for Work and Pensions

EHC – Education, Health and Care

ESA – Employment Support Allowance

ET – Employment Tribunal

GDS – Government Digital Services

IAC – Immigration and Asylum Chamber

IRP – Independent Review Panel

LA – Local Authority

PDR – Proportionate dispute resolution

PIP – Personal Independence Plan

SEN – Special Educational Needs

SEND – Special Educational Needs and Disability

PASC – Public Administration Select Committee

PHSO – Public Health and Services Ombudsman

RUCAT – Road Users Charging Adjudicators' Tribunal

TNJT – Transfer and New Jurisdiction Team

TPC – Tribunal Procedure Committee

VTE – Valuation Tribunal England

VTS – Valuation Tribunal Service









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