Tribunal Reform

Discussion Paper on the Future Administration and Structure of Tribunals in Northern Ireland

December 2011
1. **Summary**

1.1 This paper is concerned with improving access to justice and seeks views on the realignment of the tribunals system in Northern Ireland.

1.2 Adjudicating many thousands of cases a year, tribunals are a significant component of the civil justice system in Northern Ireland, but over recent years concerns have arisen about the independence and coherence of arrangements. Traditionally sponsored and funded by the Departments whose decisions were subject to appeal, tribunals have been criticised for being insufficiently detached from government, while their isolated development and independent working has given rise to criticisms about variations in standards, practice and performance.

1.3 To address those concerns, in July 2009 the Northern Ireland Executive approved the establishment of a unified tribunal administration aimed at delivering an integrated, efficient, and customer focused service, independent of the authorities whose decisions are subject to appeal. The transfer of administrative responsibility for a number of tribunals to the Northern Ireland Court Service on 1 September 2009 and 1 April 2010 represented a significant step towards achievement of that goal.\(^1\) The devolution of justice functions on 12 April 2010 enabled further progress to be made and in particular allowed the transfer of statutory responsibility for tribunals to the newly created Department of Justice. That next step was endorsed by the Executive in November 2010 and, although it is still in the process of being implemented, the transfer of statutory responsibility for seven tribunals in April 2011\(^2\) ensured that the Department, through the Northern Ireland Courts and Tribunals Service (‘NICTS’), now administers the majority of tribunals operating in Northern Ireland.

1.4 While it is proposed to continue to build on the unified platform through the integration of further tribunals to the NICTS, the Department also intends to ensure that the opportunities of the centralisation achieved thus far are realised, and is developing proposals for the reform of structures and systems. Reform is aimed at improving

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\(^1\) Those transfers were achieved by agency arrangement.

\(^2\) Departments (Transfer of Functions) Order (Northern Ireland) 2011 (S.R. 2011 No.44) transferred statutory responsibility for the Mental Health Review Tribunal, the Care Tribunal, the Tribunal under Schedule 11 of the Health and Personal Social Services (NI) Order 1972, the Special Educational Needs and Disability Tribunal, the Lands Tribunal, the Traffic Penalty Tribunal and the Health and Safety Tribunal to the Department of Justice. The Charity and Valuation Tribunals also came within the remit of the Department of Justice on that date.
existing arrangements for those tribunals within the remit of the Department of Justice but it is intended that, insofar as is possible, proposals will be future proofed to ensure they are also appropriate for tribunals which subsequently come within the remit of the Department.

1.5 The aim of reform is to ensure that tribunal users have access to a system of redress which is:

- flexible;
- efficient;
- transparent,
- independent;
- impartial; and
- simplified.

1.6 There are a number of possible approaches to achieving those goals, including:

a. Maintaining the Status Quo – by preserving the system developed thus far but undertaking no further reform;

b. Continuing to create a Unified Administration – by bringing those tribunals which continue to be sponsored by other bodies within the remit of the NICTS, but stopping short of creating an aligned or integrated system;

c. Creating an Aligned System – by maintaining the range of individual tribunals under the control of the unified administration of the NICTS while aligning practices, procedures, and appointment and training arrangements to ensure consistency of approach; and

d. Establishing an Integrated System – by creating an integrated tribunal structure with unified practices and procedures and with jurisdiction to hear all, or certain categories of, appeal.

1.7 To help decide the optimum approach, and identify other possible approaches to reform, this paper seeks the views of organisations, groups and individuals with an interest in the administrative justice system in Northern Ireland. It is intended that policy proposals informed by those views will be subject to a public consultation exercise early next year.
1.8 The list of consultees (Appendix 1) is not meant to be exhaustive or exclusive. Responses are welcomed from anyone with views on matters covered by the paper, whether they are organisations or individuals. The questionnaire which accompanies this document notes matters on which views would be particularly welcome, but responses are also welcomed on any issue raised by the document, including any aspects of the current system which work well and should be maintained, and those which are disadvantageous and should be reformed. An electronic copy of the document and accompanying questionnaire are also available on the Department of Justice website at www.dojni.gov.uk.

1.9 Please respond by 6 January 2012 to:

Email: policyandlegislation@courtsni.gov.uk
Post: Department of Justice
Civil Justice Policy and Legislation Division
Laganside House
23 – 27 Oxford Street
Belfast
BT1 3LA
Tel: 028 90412901
Fax: 028 90728944
Textphone: 028 90142920
2. Introduction

The Need for Change

2.1 Tribunals provide an alternative to the courts for resolving disputes. Although they deal primarily with individuals aggrieved that a government department or agency has got a decision affecting them wrong, they are also used to resolve party to party disputes, such as employment issues arising between individuals and businesses. Consequently, tribunals deal with matters as diverse as they are fundamental to the lives of citizens, including the review of decisions as to whether a patient is properly detained (the Mental Health Review Tribunal), whether a child is obtaining adequate educational support (the Special Educational Needs and Disability Tribunal) or whether an entitlement to child support benefit has been provided (Appeals Tribunal).

2.2 Traditionally considered advantageous because of their expertise, and because they have been perceived as a less costly, less protracted, and less complex means of adjudication than the courts, tribunals grew over the twentieth century to become an integral and significant part of the administrative justice system. In recent years, however, the landscape has become increasingly complex and fragmented and has been the subject of criticisms which have highlighted the need for change.3

2.3 Until recently tribunals in Northern Ireland have operated independently of each other, an arrangement which resulted in concerns about variations in practice and inconsistency of approach. The absence of a common method of formally reporting findings to the parent departments also led to concerns that the function of improving public sector decision making was not being fully realised.

2.4 Levels of accountability have also caused unease. Although they are designed to be a more accessible means of challenging decisions than the courts, it is considered that tribunals should be able to demonstrate similar levels of impartiality and independence. Historic sponsorship arrangements did not, however, provide confidence

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3 Momentum for change was increased by findings of an inter-departmental working group established in 2005 which concluded that many of the concerns which had been expressed about the system were justifiable.
that that goal had been achieved\(^4\) as tribunals were funded and their members appointed by those same Departments whose decisions were being reviewed.

2.5 In addition to criticisms of the system, the Government agenda for reform of public services also increased momentum for reform.

2.6 In 2004\(^5\) the Northern Ireland Civil Service set out its commitment to consolidating and redesigning business processes and infrastructure and to enabling shared services in order to increase capacity and capability and provide a better service to the public. Recognising that decentralisation prevented the realisation of such benefits, Rt Hon Peter Hain MP, the then Secretary of State for Northern Ireland announced in March 2006 the intention to commence a programme of tribunal reform.

2.7 That reform programme was endorsed in July 2009 and November 2010 when the Northern Ireland Executive agreed to establish a unified, accountable, independent, efficient, and customer focused administration for tribunals.\(^6\)

**Approach to Reform – Progress to Date**

2.8 The reform initiative, which began prior to devolution of justice functions, has been progressed in stages\(^7\). The first stage focused on alleviating the most immediate concern, the perceived lack of independence, and concentrated on ensuring a clear line of demarcation between the decision making authorities and tribunals. That was achieved in September 2009 and April 2010\(^8\) by the transfer of administrative responsibility for most Northern Ireland tribunals, to what was then the Northern Ireland

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\(^4\) 80% of respondents to the Government’s White Paper *Transforming Public Services, Complaints, Redress and Tribunals* (2004), identified the arrangements in Great Britain at that point as a threat to independence. Arrangements then applicable substantially mirror those which also historically existed in Northern Ireland.

\(^5\) *Fit for Purpose: The reform agenda in the Northern Ireland Civil Service* (October 2004).

\(^6\) Agreement at Hillsborough Castle (5 February 2010) further authorised the Department of Justice to progress the reform.

\(^7\) The Chronology of reform is detailed at Appendix 2.

\(^8\) On 1 September 2009, administrative responsibility transferred to the Northern Ireland Court Service from the Department of Finance and Personnel for the Lands Tribunal and from the Department of Health Social Services and Public Safety for the Care Tribunal, Mental Health Review Tribunal, the Tribunal under Schedule 11 of the Health and Personal Social Services (Northern Ireland) Order 1972 and for the Special Educational Needs and Disability Tribunal from the Department of Education. Administrative responsibility for the Appeals Tribunal and Rent Assessment Panel transferred from the Department of Social Development on 1 April 2010. The Court Service undertook responsibility for the newly established Health & Safety and Charity Tribunals on 1 April 2010.
Court Service (an arrangement which was managed through agency agreements with the relevant Departments).\textsuperscript{9}

2.9 Devolution of justice functions on 12 April 2010, and the transfer of responsibility for the courts from the Lord Chancellor to the Department of Justice, paved the way for a further stage of reform by providing the opportunity to consolidate administrative arrangements and transfer statutory responsibility for tribunals to the Department. Following endorsement by the Justice Committee,\textsuperscript{10} Executive agreement,\textsuperscript{11} and Assembly affirmation,\textsuperscript{12} that next stage was substantially advanced on 1 April 2011 through the transfer of statutory responsibility for seven tribunals.\textsuperscript{13}

2.10 Realignment of tribunals under the unified administration of the NICTS has allowed a number of concerns about the tribunals system to be addressed. Many of the advantages of shared services and approach have been realised through the co-location of tribunals, the integration of administrative support, and through the incremental rationalisation of operational and management structures.

2.11 The opening of a shared hearing centre in September 2009 with a single IT platform and a pooled administrative resource has facilitated the development of a multi-skilled workforce, allowed management structures to be streamlined, and improved business contingency capability.\textsuperscript{14} The hearing centre has also increased visibility and improved accessibility and by decreasing the need to use venues external to the court estate, has reduced the overall cost of administration.

2.12 Centralisation has also facilitated the implementation of a single clear system of governance and enabled user focused resource management through the monitoring of performance and trends. Common customer service standards and targets have been

\textsuperscript{9} Transfer of administrative responsibility was achieved by agency arrangements under section 28 of the Northern Ireland Act 1998 (c.47).
\textsuperscript{10} 13 May 2010.
\textsuperscript{11} 18 November 2010.
\textsuperscript{12} 1 April 2011.
\textsuperscript{13} Departments (Transfer of Functions) Order (Northern Ireland) 2011 (S.R. 2011 No.44) transferred statutory responsibility for the Mental Health Review Tribunal, the Care Tribunal, the Tribunal under Schedule 11 of the Health and Personal Social Services (NI) Order 1972, the Special Educational Needs and Disability Tribunal, the Lands Tribunal, the Traffic Penalty Tribunal and the Health and Safety Tribunal to the Department of Justice. The Charity and Valuation Tribunals also came within the remit of the Department of Justice on that date but no statutory functions required to be transferred.
\textsuperscript{14} The Care Tribunal, Charity Tribunal, Mental Health Review Tribunal, Health and Safety Tribunal, Traffic Penalty Tribunal, Valuation Tribunal, Social Security and Child Support Commissioners and the Special Educational Needs and Disability Tribunal are all based in the Tribunals Hearing Centre in Bedford House, Bedford Street, Belfast.
developed and lessons learnt and best practice principles have been shared through internal workshops and project groups.

2.13 Such improvements have been verified by a recent customer survey which indicated that overall, respondents had a positive experience of the tribunals system. A majority of respondents said that they found it easy to obtain information about the appeal process and that the procedure for making an application was straightforward. The vast majority felt that the role of everyone in the process was clearly explained. A total of 65% of respondents found it easy to understand the process during the hearing and 82% found that the time taken for the tribunal to reach a decision was reasonable. The survey also confirmed that the process is not protracted, as 78% of respondents confirmed that their appeals were dealt with at the first appeal hearing.\(^\text{15}\) It is recognised, however, that there is still work to do, as only 50% of respondents were satisfied that the waiting time for the first appeal hearing was reasonable.

### Approach to Reform – Next Steps

2.14 To build on benefits realised thus far and to address continuing concerns about user disadvantage detailed in recent research (noted below), the Department of Justice now intends to embark on a further stage of reform by considering whether substantive changes to operating systems and structures would realise further advantages for users. The Department intends to consult on proposals for reform early next year and, to help inform those proposals, is seeking views on the merits and disadvantages of the current system and the optimum structure for a reformed system.

2.15 In addition to responses to this paper, the Department will be mindful of experiences in England and Wales, where a unified Tribunals Service was set up in April 2006\(^\text{16}\) and, in particular, the applicability and merits of the structures established by the Tribunals, Courts and Enforcement Act 2007. That is:

- the establishment of a single judicial leadership role for tribunal judiciary;
- the establishment of a unitary first tier tribunal to be the first instance tribunal for most appeals;

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\(^{15}\) Survey conducted by the statistics team of the NICTS in January and February 2011. 320 questionnaires were issued and there was a twenty percent response rate.

\(^{16}\) An integrated Courts and Tribunals Service was subsequently created in England and Wales on 1 April 2011. The Service, which operates as a partnership between the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals, is currently responsible for the administration of the criminal, civil and family courts and tribunals in England and Wales and non-devolved tribunals in Scotland and Northern Ireland.
the establishment of a unitary upper tribunal system to provide a second right of appeal on a point of law;

clarification of the status of tribunal judiciary; and

the creation of an Administrative Justice and Tribunals Council with the power to review the administrative justice system and advise on the development of tribunals, including ways to make the system more accessible, fair and efficient.

2.16 Given that those structures (which were also aimed at addressing the coherence, consistency, and clarity previously absent from the tribunal system) already apply to Northern Ireland tribunals which operate on a UK wide basis, the applicability of similar arrangements in the much smaller jurisdiction of Northern Ireland will be considered, particularly given the financial implications of mirroring that infrastructure. Note will also be made of progress in Scotland where efforts are also being made to unify tribunals administration under the governance of the Scottish Tribunals Service and of arrangements governing comparable tribunals in the Republic of Ireland, although we understand that there are no current proposals for reform of those bodies.

2.17 Proposals will also be informed by recommendations which have already been made for the reform of the tribunal system. In June 2010, the Law Centre (NI) published a report on Redressing Users’ Disadvantage which focused on the interests of users and the importance of independence and training for tribunal members. More recently, the Nuffield Foundation has supported Law Centre commissioned research on providing advice and support to tribunal users and a paper on structural reform by Brian Thompson of the University Of Liverpool School Of Law. Those reports have been facilitated by a Tribunal Reform Reference Group established by the Minister of Justice to:

- support the process of tribunal reform by mapping the administrative justice landscape;
- identify the costs and benefits of restructuring tribunals; and

17 *Redressing Users’ Disadvantage: Proposals for Tribunal Reform in Northern Ireland*, G McKeever and B Thompson (June 2010).
18 The Nuffield Foundation is a charitable trust established in 1943.
20 *Structural Tribunal Reform in Northern Ireland*, B Thompson (2011).
The Department is concerned to address any perceived difficulties with the tribunal system which would dissuade or prevent potential users from availing of what is intended to be a quick, inexpensive and simplified mechanism for dispute resolution. In bringing forward any recommendations for change, the Department will be mindful that in a time of economic stringency, when public services are liable to be pared back, the machinery for addressing disputes between individuals and public agencies is likely to assume increased significance.

The overriding objective of tribunal reform is to deliver an independent and customer focused system which provides value for money. The Department wishes to adopt a system model which builds on the merits of existing structures, experience and best practice. The reform initiative is based on the premise that departments and agencies should always seek to make the right decision at the right time and, therefore, also aims to deliver a process which effects improvements in decision making so that fewer cases need to come before tribunals.

The reform initiative is aimed at developing a system of redress which adheres to the following principles:

- flexibility;
- efficiency;

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21 The Reference Group includes representatives of the Office of the Northern Ireland Ombudsman, the Office of the Lord Chief Justice, the Office of the First Minister and deputy First Minister, the advice sector and the Law Centre (NI).

22 Redressing Users’ Disadvantage: Proposals for Tribunal Reform in Northern Ireland notes that numbers interviewed are not representative but instead are a ‘snapshot’. Thirty-six interviews were conducted between August 2009 and February 2010. The report focused on three tribunals, Appeals Tribunals, Industrial Tribunals and Fair Employment Tribunal and the Special Educational Needs and Disability Tribunal. Supporting Tribunal Users: Access to pre-hearing information, advice and support in Northern Ireland also focused on the Appeals Tribunals, Industrial Tribunals and Fair Employment Tribunal and the Special Educational Needs and Disability Tribunal and was informed by input from thirty five individuals (interviews with sixteen tribunals users, five interviews with tribunal staff and departmental officials, a focus group with eight specialist legal and lay advisors and questionnaires from six advisors).
transparency,
- independence;
- impartiality; and
- simplicity.

2.21 There are a number of possible approaches to creating a system which adheres to those principles, including:

a. Maintaining the Status Quo – by preserving the system developed thus far but undertaking no further reform;

b. Continuing to create a Unified Administration – by bringing those tribunals which continue to be sponsored by other bodies within the remit of the NICTS, but stop short of creating an aligned or integrated system;

c. Creating an Aligned System – by maintaining the range of separate tribunals under the control of the unified administration of the NICTS while aligning practices, procedures, and appointment and training arrangements to ensure consistency of approach; and

d. Establishing an Integrated System – by creating an integrated tribunal structure with unified practices and procedures with jurisdiction to hear all, or certain categories of, appeal.

Scope

2.22 This stage of reform is not solely focused on statutory change. While it is anticipated that any structural changes recommended following the consultation process will require to be implemented by legislative means, views are also sought on improvements which could be achieved administratively.

2.23 It is intended that proposals developed following the consultation process will be applied to those tribunals within the statutory remit of the Department of Justice (Appendix 3). Principles will also be applied (in so far as they are appropriate) to any tribunal which subsequently transfers to the Department. Consultees are therefore also asked to consider the most appropriate structures and procedures for a system which encompasses the Appeals Tribunals, the Rent Assessment Panel and the Industrial Tribunals and Fair Employment Tribunal which, it is intended, will also transfer to the future administration of these tribunals.
In the interim, any comments arising from this document which are relevant to bodies outside the remit of the Department will be shared with the relevant sponsor body.

2.24 At this juncture, the extent to which proposals will apply to tribunals, such as those dealing with tax and immigration – which are excepted and operate on a UK wide basis – is unknown. In September 2010, the Lord Chancellor announced his intention to create a unified courts and tribunals judiciary for England and Wales under the leadership of the Lord Chief Justice of England and Wales. The proposal has implications for UK wide tribunals which sit in Northern Ireland and Scotland and may result in the devolution of a number of functions. The detail and extent of devolution is currently being developed but potential implications include the transfer of the Lord Chancellor’s administrative responsibilities for tribunals to the Department of Justice and the transfer of leadership responsibility for those judiciary who exercise functions wholly or mainly in Northern Ireland from the Senior President of Tribunals to the Lord Chief Justice of Northern Ireland. Implementation of proposals will require legislation and before agreeing to any changes, the Minister of Justice, the Justice Committee and the Executive will wish to be assured that proposals will benefit tribunal users here.

23 Transfer of the Appeals Tribunals and the Rent Assessment Panel from the Department for Social Development and the Industrial Tribunals and Fair Employment Tribunal from the Department for Employment and Learning was agreed by the Justice Committee on 13 May 2010 and by the Executive on 18 November 2010. Arrangements are currently being made to facilitate statutory transfer of those tribunals.
24 Written Ministerial Statement made in the House of Commons on 16 September 2010.
25 The Lord Chancellor wrote to the Minister of Justice and the Lord Chief Justice to advise of the proposal prior to the laying of the Written Ministerial Statement.
3. Jurisdictional Framework

Current Landscape

3.1 While significant progress has been made on the creation of a unified administration, the tribunal landscape in Northern Ireland remains a complex one and a number of tribunals remain outside the remit of the Department of Justice.

3.2 Of the tribunals currently operating in Northern Ireland (Appendix 3), the Department of Justice currently sponsors the following:

- Care Tribunal;
- Charity Tribunal;
- Criminal Injuries Compensation Appeals Panel;
- Health and Safety Tribunal;
- Lands Tribunal;
- Mental Health Review Tribunal;
- Northern Ireland Valuation Tribunal;
- Traffic Penalty Tribunal;
- Tribunal under Schedule 11 of the Health and Personal Social Services (NI) Order 1972;
- Social Security Commissioners and Child Support Commissioners; and
- Special Educational Needs and Disability Tribunal.

3.3 The Department also currently administers the Appeals Tribunal and the Rent Assessment Panel on behalf of the Department for Social Development, an arrangement which is managed through an agency agreement. The current planning assumption is that the transfer of statutory responsibility for those tribunals, together with the transfer of responsibility for the Industrial Tribunals and Fair Employment Tribunal from the Department for Employment and Learning, will be achieved in 2012, subject to Ministerial agreement and consultation with the relevant Departmental Committees.

3.4 A small number of tribunals continue to be administered by other Northern Ireland Departments, including the Planning Appeals Commission and Water Appeal
There are no current plans for those tribunals to come within the remit of the Department of Justice.

3.5 A brief description of the functions of tribunals potentially within the scope of reform is detailed at Appendix 4. Collectively they employ in excess of 170 administrative staff and 500 tribunal members (Appendix 5) at a cost of approximately £12.17 million per annum. Figures for the 2010/2011 financial year show that the highest number of applications are made to those tribunals which process appeals against decisions relating to welfare benefits (14,568 cases in 2010/11) and those which deal with employment matters (3,216 cases in 2010/11). Some of the tribunals with lower case loads, however, deal with particularly vulnerable or disadvantaged groups (the Mental Health Review Tribunal (290 cases in 2010/11) and the Special Educational Needs and Disability Tribunal (66 cases in 2010/11)).

3.6 In addition to the tribunals which fall within the devolved sphere, the First-tier and Upper Tribunals, which operate on a UK wide basis, also sit in Northern Ireland. The jurisdiction of the First-tier and Upper Tribunals in Northern Ireland, is, however, relatively discrete, dealing only with excepted matters such as immigration and tax. The NICTS currently provides administrative support to reserved tribunals under a service level agreement with HM Courts and Tribunals Service but statutory and financial responsibility remains outside the Department.

**Jurisdiction and Structure**

3.7 The creation of a Tribunals Service for UK wide tribunals in April 2006 was followed by the establishment of a unified First-tier tribunal under the Tribunals, Courts and Enforcement Act 2007. While a number of tribunals remain outwith the remit of the

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26 Sponsored by the Office of the First Minister and Deputy First Minister.
27 The tribunals currently within the statutory remit of the Department of Justice currently have 199 members and 29 staff. The total annual budget is approximately £2,100,000.
28 HM Courts and Tribunals Service, which is an agency of the Ministry of Justice, was established on 1 April 2011 to bring together Her Majesty's Courts Service and the Tribunals Service into one integrated agency. It operates as a partnership between the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals under a Framework Document.
29 The reserved tribunals administered by the NICTS are the Immigration and Asylum Chamber and the Administrative Appeals Chamber of the Upper Tier and the Immigration and Asylum Chamber and General Regulatory Chamber (Information Rights (formerly Data Protection Tribunal, Consumer Credit and Estate Agents, Immigration Services, Environment) and Tax Chamber (General Commissioners, Special Commissioners, VAT and Duties and Section 706 Tribunals) of the First-tier.
30 Section 3 to the Tribunals, Courts and Enforcement Act 2007.
First-tier tribunal, the vast majority of first instance appeals have been aligned in chambers within that overarching unified structure. The jurisdiction of the First-tier is detailed at Appendix 6.

3.8 The Nuffield research recommends that an amalgamated tribunal structure should also be created in Northern Ireland. It suggests that a generic jurisdiction would maximise flexibility and allow for future development and recommends that the amalgamated body include not only tribunal members but, to maximise flexibility, court judiciary as well.

3.9 The Department acknowledges that the current demarcations between tribunals may not be the most flexible approach to managing fluctuations in the workload of established jurisdictions or to the integration of new tribunal jurisdictions. It is therefore keen to receive views on whether a single tribunal, with remit to hear all first instance appeals, should be established in Northern Ireland.

3.10 Given the size of this jurisdiction, the subdivision of a first instance tribunal into chambers as in England and Wales was not considered necessary by the Nuffield research. Instead the research recommends that cases be allocated to members on the basis of expertise and training.

3.11 The Department acknowledges that a subdivided jurisdiction may not facilitate case management, consistency, or the development of a common approach to decision making as easily as a purely generic structure. A generic structure also has the potential to increase the skills base of tribunal members by allowing them to consider a wider variety of cases and might also address the difficulties historically experienced with the recruitment of certain experts, such as medical members. Empirical evidence suggests that these problems arose in part because tribunals were effectively ‘fishing in the same pool’.

3.12 It is equally arguable that the absence of clear divisions between tribunals could impact negatively on the expertise that specialisation generates. Views are therefore sought on whether, if a single tribunal structure is adopted, it should be arranged

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31 Such as the Employment Tribunals. Tribunals which remain outside the First and Upper Tier Tribunal structure are also administered by Her Majesty’s Courts and Tribunals Service.
into separate chambers. Views are also welcomed on possible chamber categories if such a structure were to be adopted.

3.13 In England and Wales, the Employment Tribunals were excluded from the First-tier Tribunal on the basis that they handle party to party disputes and a very high volume of cases. While such an arrangement would be inconsistent with the principle of an amalgamated jurisdiction, the Department is seeking views on whether any categories of case or tribunal should similarly remain outside the remit of an amalgamated structure in Northern Ireland.32

Decision Review

3.14 Although the creation of a single tribunal may in itself contribute to the development of a coherent body of law and improved decision making, the Nuffield research suggests that the development of administrative law could be further enhanced if both first and second instance appeal tiers had the power to review their own decisions, either at their own volition, or on the instigation of parties.

3.15 In England and Wales, provision was made in the Tribunals, Courts and Enforcement Act 2007 and tribunal rules to allow decisions to be reviewed so that errors can be remedied without the need for further appeal or judicial review. Empirical evidence would seem to suggest that this provision has been beneficial and that it can generate tangible benefits for users and the taxpayer and views are sought on the benefit of making similar provision in this jurisdiction.

Appeals

3.16 There are currently a number of separate routes for appeal against tribunal decisions in Northern Ireland. Appeals arising from decisions of the:

- Appeals Tribunal are heard by the Social Security Commissioners and Child Support Commissioners;
- Valuation Tribunal are heard by the Lands Tribunal;

32 In bringing forward proposals for reform the Department will also consider responses to the Public Consultation exercise Disputes in the Workplace: A Systems Review undertaken in 2009 by the Department for Employment and Learning. The consultation which closed on 4 September 2009 also considered whether the appeal process for employment matters should be restructured and whether the introduction of an Employment Appeal Tribunal would be an improvement on the current structure.
Special Educational Needs and Disability Tribunal and Care Tribunal are heard by the High Court; and
Lands Tribunal and Industrial Tribunals and Fair Employment Tribunal are heard by the Court of Appeal.

Some tribunals have no specific right of appeal, although redress can be sought through the judicial review process. The appeal structure in Northern Ireland is mapped out at Appendix 7.

3.17 In England and Wales, most appeals against decisions of the First-tier Tribunal lie to the Upper Tribunal (Appendix 8). As that structure already applies on a limited basis in this jurisdiction it is arguable that, for reasons of consistency and for users’ clarity, similar structures could be established for Northern Ireland specific tribunals.

3.18 The creation of a single appellate body may assist in the development of expertise and might make it easier for support organisations to provide assistance and advice. The Nuffield research suggests that creating a specific appellate tier could have a positive impact on accessibility and affordability. It says that court procedures are not necessarily amenable to self or lay representation, and that the liability of the losing party for costs could dissuade against bringing appeals while some jurisdiction continues to vest in the more expensive higher tier courts.

3.19 Although efficiency and the interests of the justice system as a whole may not best be served by allocating senior judicial resources to hear tribunal appeals it does not necessarily follow that a dedicated appellate tier should be established in Northern Ireland. Arguably, the small Northern Ireland jurisdiction, the small number of second instance appeals which arise, and the new emphasis on getting things right as early as possible, obviates the need for an appellate jurisdiction at all. A more proportionate approach may be to make provision for first-instance tribunals to review their own decisions (obviously such decisions would remain susceptible to judicial review). **Views are therefore sought on the merit of retaining rights of appeal from the ‘first tier’ tribunals.**

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33 Established by section 3 of the Tribunals, Courts and Enforcement Act 2007 (c.15).
34 For example, the Office of the Social Security and Child Support Commissioners dealt with 158 applications and 141 appeals during 2010/11, which represents 1.08% of Appeal Tribunal Cases.
3.20 Views are also sought on whether, if second instance appeal rights are retained, appeal mechanisms should be rationalised as in England and Wales and whether rights should similarly be restricted. Under the Tribunals, Courts and Enforcement Act 2007, second instance appeals are subject to leave from either the First-tier or Upper Tribunal on application and there is no right of appeal against certain excluded decisions. The Department is interested to receive views on the application of similar arrangements in this jurisdiction.

**Judicial Review**

3.21 In England and Wales, judicial review was included within the jurisdiction of the Upper Tribunal so that the experience and expertise of that body could be utilised to further enhance the development of a coherent body of administrative law. Views are sought on whether the High Court in Northern Ireland should similarly transfer its judicial review jurisdiction to an upper tier tribunal if such is established.

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35 Section 11 of the Tribunal, Courts and Enforcement Act 2007 (c.15).
36 Excluded decisions are defined by subsection 11(5) of the Tribunal, Courts and Enforcement Act 2007 (c.15). Examples include appeals against national security certificates and decisions of the First-tier Tribunal to review or not to review, an earlier decision of the tribunal.
4. Process and Procedure

Process

4.1 The tribunal business process, from case initiation to determination, is common to most tribunals. Much has been done during the first stages of the reform initiative to standardise practice in those tribunals within the statutory and administrative remit of the Department of Justice. Issues of process have previously been described as a challenge to users and the Department is keen to seek **views on any changes to process or further improvements which would enhance users’ experience at tribunal**.

4.2 The Nuffield research suggests a range of issues impact on appellant experience. It points out that many applicants entered the process with trepidation because of a lack of clarity about what to expect. Access to, and disparity in the quality of written information, also appear to have been the subject of some concern, as has the intelligibility of appeal papers and decisions, and the impact of requests for further and better particulars on unrepresented parties.

4.3 As noted above, a recent customer survey revealed the progress which has already been made regarding those criticisms. A majority of respondents indicated that they found it easy to obtain information about the appeal process and that the procedure for making an application was straightforward. The vast majority also indicated that the role of everyone in the process was clearly explained, while 65% of respondents indicated that they found it easy to understand the process during the hearing. Notwithstanding this the Department is keen to **explore issues which might continue to dissuade users from seeking redress through the tribunal system**. Views are also sought on how any such issues could best be addressed. The Nuffield research, for example, recommends that among other matters:

- consideration should be given to improving access to and the quality of written information to advise users of rights and obligations and options for dispute resolution;
- the potential of providing video information for users on dispute resolution processes should be explored;
- co-ordinated methods of responding to user problems across statutory, advice and tribunal bodies should be developed to avoid continuous referral without resolution;
that innovative models of providing information and support to tribunal
users should be considered;\textsuperscript{37} and
\begin{itemize}
  \item an ongoing programme for the education of those from whom users may
  seek advice should be developed to facilitate effective access to referral
  organisations.
\end{itemize}

The Department does, however, welcome further suggestions.

\textbf{Hearings}

4.4 The Department is keen that the informal ethos of tribunals is maintained and
has noted concerns in the Nuffield research that hearings can be an intimidating
environment for users. The Department accepts that not all adjudications may require a
formal hearing and is keen to explore the utilisation of alternative means of
adjudication. In particular, views are sought on the merits of adjudication on
written papers, and the use of telephone and video conferencing, some of which are
already used to a certain extent. A pilot of hearing by telephone conference has already
been undertaken by theTraffic Penalty Tribunal and the Department would be open to
extending use of that and other less formal facilities, where it is appropriate to the
particular idiosyncrasies of the individual tribunals and hearings, and in circumstances
where users would consider the facility beneficial. The Department would therefore be
interested to note views on the categories of case or stage of adjudication to which
alternative means of adjudication might successfully be applied.

\textbf{Procedural Rules}

4.5 Tribunal Rules in England and Wales have been revised to include an overriding
objective to deal with cases fairly and justly, and regulations previously applicable to
individual tribunals have been replaced with sets of generic rules. The Nuffield research
recommends that a similar approach be adopted in Northern Ireland, and the Department
acknowledges that a generic procedural platform could enhance accessibility and
increase coherence in the system. It is also recognised that harmonisation may be
particularly beneficial to those tribunals where a number of different sets of rules already
apply and that standardisation would assist in the training of new members, particularly
in the event that a tribunal with generic jurisdiction were established.

\textsuperscript{37} This matter has been subject to consideration by the Access to Justice Review which is currently subject to consultation.
4.6 The Department also accepts that developing new regulations may help address concerns about over-prescription of procedure and the unnecessary legalisation of the tribunal process. The Department is therefore seeking **views on the merits of rationalising procedural rules**. It is acknowledged that any such generic rules would need not only to provide common terminology and common pathways through processes, but would also need to facilitate the specific needs of individual jurisdictions.

4.7 In England and Wales, responsibility for making tribunal rules vests in the Tribunal Procedure Committee established by the Tribunals Courts and Enforcement Act 2007.\textsuperscript{38} The Committee has responsibility for making rules governing both the First-tier and Upper Tribunal (terms of reference are detailed at Appendix 10). In Northern Ireland, responsibility for making rules of procedure vests in the relevant sponsor Departments and is now primarily a matter for the Department of Justice which could undertake a review and harmonise existing rules. There are, however, precedents in Northern Ireland for the establishment of procedural committees equivalent to the Tribunal Procedural Committee.

4.8 Rules governing procedure in the courts are made by Rules Committees constituted for each judicial tier. Each of the Committees is constituted differently, but all reflect the technical procedural nature of the rules by drawing on the knowledge and expertise of a wide range of stakeholders and end users and they encompass members of the judiciary, the legal profession, the NICTS, the Public Prosecution Service and the Attorney General's Office. Members are generally appointed by the Lord Chief Justice although some are nominated by the legal professions and the Department. The coherent and effective rules of practice developed by the Committees testifies to the benefits of drawing on the experience of users and key stakeholders and the Department is therefore seeking **views as to whether an equivalent body should be established to make tribunal rules**. Views are also sought on composition of any such committee, and, in particular, whether the inclusion of a lay representative would increase the perspective of a rule making body and enhance accessibility.

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\textsuperscript{38} Section 22. Membership of the Committee is governed by Schedule 5 to the Act. It consists of the Senior President of Tribunals or a person nominated by him; four members appointed by the Lord Chancellor, one of whom is nominated by the Administrative Justice and Tribunals Council; three members appointed by the Lord Chief Justice; one member appointed by the Lord President of the Court of Session; and up to four additional members, nominated by the Senior President of Tribunals and appointed by an appropriate senior judge, with relevant experience in and knowledge of a particular issue or subject area. The Procedural Committee has been classified as a Non Departmental Public Body and the four appointments made by the Lord Chancellor are governed by the Office of the Commissioner for Public Appointments Code of Practice.
Pre-Hearing Advice and Representation

4.9 The Nuffield research focused on the importance of awareness of, and access to, advice and representation. In particular, it notes that representation can allow equality of arms between parties and objective interaction in matters which can be highly emotive. It also noted, however, that representation can be prohibitively expensive and concluded that legally qualified representation is less important than the quality of advice.

4.10 The Department has noted those concerns and acknowledges that the provision of advice is an issue both before and during hearings. It also acknowledges that because of the inquisitorial, informal ethos of tribunals legal aid has been restricted to the particularly vulnerable or to circumstances where deprivation of liberty is being determined. Representation is currently a matter of active consideration by the Department.

4.11 The Access to Justice Review, which is open to consultation until 13 December, has noted concerns about the possible impact of changes to the benefits regime on the need for representation. Respondents to the Review noted particular concerns about the Special Educational Needs and Disability Tribunal which was described as legalistic, highly complex, and daunting and proposed that a cadre of expert advocates (not necessarily legally qualified) might be funded to assist appellants at tribunals, and allow equality of arms in cases where authorities appear with lawyers and experts.

4.12 The Review team has, however, concluded that it would not be feasible or desirable to allow publicly funded representation in all tribunal cases. Instead it has suggested that contracts or grants for advice and assistance in welfare matters should include provision for enhanced advice and assistance with case preparation and, where appropriate, representation at tribunal hearings. The Review has also recommended that the Department of Justice should be a member of the Government Advice and Information Group led by the Department for Social Development and that it should prepare guidance on sources of generalist and specialist advice for use by advice organisations and solicitors.

39 Mental Health Review Tribunal.
4.13 The Department will consider responses to those recommendations. In the interim, it is also keen to consider alternative means by which concerns about representation could be addressed. The Department appreciates, for example, the role that tribunal members, and in particular the tribunal Chairs, will have in determining the tone of tribunal proceedings and in enabling appellants to progress cases without representation. Indeed the Nuffield research indicates that there is already a strong consensus among tribunal members that their role is to enable the presentation of a case whether or not individuals are represented. That finding underscored research undertaken by Professor Michael Adler between 2005 and 2007 which found that representation is no longer premium in circumstances where users receive pre-hearing advice and are enabled by the approach adopted by tribunals. There may, however, be other means by which perceived disadvantages arising from the absence of representation could be addressed.

Alternative Dispute Resolution

4.14 There are a number of different forms of alternative dispute resolution including:

- mediation (where parties to a disagreement are facilitated in reaching an agreement themselves through the offices of an independent third party);
- conciliation (where an independent third party takes a more proactive role and advises on possible solutions that might be adopted by parties but where the decision on whether to agree proposed solutions remains a matter for the parties); and
- arbitration (where, by agreement between the parties, a matter is referred to an independent third party for a decision).

Early Neutral Evaluation by judges is a form of conciliation which can focus the minds of parties on options for resolution in the early stages of proceedings. That process provides parties with an indication of the likely outcome of a case so that they can proceed to negotiation or mediation on an informed basis and can reach agreement without formal hearing.

4.15 Alternative dispute mechanisms are already available to some tribunal users such as parties to the Special Educational Needs and Disability Tribunal, who can utilise the conciliation service of the Dispute Avoidance and Resolution Service, and parties to

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40 Professor of Socio-Legal Studies in the School of Social and Political Studies at the University of Edinburgh, Tribunal Reform: Proportionate Dispute Resolution and the Pursuit of Administrative Justice.
complaints before the Industrial Tribunals and Fair Employment Tribunal who can avail of the conciliation, mediation and arbitration services provided by the Labour Relations Agency. Uptake of available mechanisms can, however, be low. Notwithstanding that fact, the Nuffield research favours the use of alternative mechanisms for dispute resolution and, in particular, found that employment tribunal cases were particularly susceptible to early resolution through mediation.

4.16 In England and Wales, a mandatory dispute resolution commitment has been developed for government departments and agencies.41 The guidance requires the use of dispute avoidance mechanisms in contract management and in relations with the public. It also requires the development of appropriate alternative dispute resolution processes for avoiding litigation where disputes do occur. The Department recognises that such a commitment may have merits and that alternative dispute resolution has many potential benefits. If utilised more extensively, it could reduce pressure on the courts and tribunals calendar and could more easily operate within timescales to suit parties than formal adjudicative processes. Alternative dispute resolution can be a less onerous and stressful experience than formal hearings and can also allow greater flexibility over outcomes. The voluntary nature of the processes can also give parties a sense of ownership and self determination which can be absent from formal adjudication processes and produce more durable outcomes because they have the genuine consent of parties.

4.17 Given the potential benefits, the Department is keen to consider the extension of alternative dispute resolution and the terms of reference for the Access to Justice Review included an obligation to consider mechanisms for solving problems outside court.

4.18 The Review found near unanimous support for the principle amongst respondents, providing it was deployed in appropriate circumstances. It concluded that the availability of a menu of options for dispute resolution enhances access to justice. That conclusion was, however, subject to the caveats that availability of alternative mechanisms for resolution should not detract from the right of individuals to pursue cases by more formal means. It is also recognised that it might not be appropriate for all cases and that for some (such as those involving an entitlement to benefit) there is no

reasonable prospect of parties reaching an accord. The Review further noted that selecting the wrong cases for mediation or conciliation could increase costs, delay, and exacerbate difficulties between the parties.

4.19 The Review commented that economic considerations and the interests of the parties would best be served by arrangements that encourage the prevention or early resolution of disputes. It recommended that these should be actively promoted by all government departments in Northern Ireland and stakeholders in the justice system. The Department awaits responses to the Access to Justice Review but would also welcome views of consultees to this document on the use of alternative dispute resolution in the administrative justice system and ways in which their use could appropriately be extended.

Fees

4.20 Fees are currently applicable to only a very small number of tribunals in Northern Ireland. For example a nominal fee applies to matters before the Lands Tribunal\(^\text{42}\) and provision has been made for the Valuation Tribunal to charge fees. The Department recognises that income generated from fees can enhance service provision. The application of fees can also be beneficial in limiting the number of unmeritorious claims lodged and it is noted that the Chancellor recently announced that applications before the Employment Tribunal in England and Wales will incur a fee from April 2013 (which will be subject to refund if the application is successful and may be waived or reduced for those on a low income).\(^\text{43}\)

4.21 The Department recognises that the application of fees can be crucial to access to justice. This is supported within the existing fees structure for the courts through a system of subsidies, remittals and exemptions but the Department is nonetheless keen to receive views on whether there are any categories of case to which the application of fees would not be appropriate.

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\(^{42}\) Generating approximately only £1600 per annum. In E&W the Upper Chamber Lands Tribunal were recovered at only approximately 20% of their running costs in 2008/09 and following a period of public consultation, it was agreed that fees be increased to enable 50% of the Tribunal’s running costs to be recovered, with a view to paving the way for full cost recovery at a later date. Fees were subsequently increased and amended by the Upper Tribunal (Lands Chamber) Fees (Amendment) Order 2010.

\(^{43}\) It is understood that the amount charged will be subject to consultation later this year.
5. **Tribunal Members**

### Independence

5.1 Section 1 of the Justice (Northern Ireland) Act 2002 provides a statutory guarantee of independence for the judiciary.\(^{44}\) It places the First Minister, the deputy First Minister, Northern Ireland Ministers and anyone with responsibility for the judiciary or the administration of justice in Northern Ireland, under a duty to uphold judicial independence. Section 1 also provides that, in upholding judicial independence, Ministers must not seek to interfere with particular judicial decisions through any special access to the judiciary. The duties imposed by section 1 have UK wide territorial extent and include the judiciary throughout the United Kingdom but it does not currently extend to tribunal members.\(^ {45}\)

5.2 In England and Wales, the equivalent guarantee of judicial independence under the Constitutional Reform Act 2005\(^ {46}\) extends to tribunal judiciary with the First-tier and Upper Tier Tribunals.\(^ {47}\) The Nuffield research recommended the guarantee of judicial independence should be similarly extended in this jurisdiction. The Department is committed to the principles underpinning the statutory guarantee of independence and seeks the **views on whether a guarantee of judicial independence should be provided to members of those tribunals within the scope of the reform initiative.**

### Appointments

5.3 The current approach to the appointment of tribunal members in Northern Ireland is inconsistent. Some appointments are a matter for the Northern Ireland Judicial Appointments Commission\(^ {48}\) but others fall to be made at Ministerial level\(^ {49}\) (appointing authorities for each of the tribunals are set out in detail at **Appendix 11**). In contrast,

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\(^ {44}\) Statutory provision governing judicial independence is underscored by a Concordat on Judicial Independence which was agreed and signed by the Lord Chancellor, the Secretary of State and the First and deputy First Ministers on behalf of the Northern Ireland Executive. The Concordat took effect on 12\(^{th}\) April 2010.

\(^ {45}\) Judiciary is defined by section 1(4) of the Justice (Northern Ireland) Act 2002 (c.26) as including judges of the Supreme Court, any other court established under the law of any part of the UK and any international court.

\(^ {46}\) Section 3 of the Constitutional Reform Act 2005 (c.4).

\(^ {47}\) Section 1 of the Tribunal, Courts and Enforcement Act 2007 (c.15) extended section 3 of the Constitutional Reform 2005 (c.4) to tribunal judiciary.

\(^ {48}\) For example members of the Lands Tribunal, the President and panel of persons who may serve as Chairman of the Special Educational Needs and Disability Tribunal, members of the Mental Health Review Tribunal.

\(^ {49}\) For example Lay members of the Special Educational Needs and Disability Tribunal, lay members of the Care Tribunal, Lay Members of the Industrial Tribunals and Fair Employment Tribunal; Specialist and Lay Members of the Health and Safety Tribunal and Members of the Tribunal under Schedule 11 of the Health and Personal Social Services (NI) Order 1972.
most tribunal members in England and Wales are appointed by the Lord Chancellor following selection by the Judicial Appointments Commission.

5.4 The Department recognises that there may be merit in building on the principles behind the establishment of the Northern Ireland Judicial Appointments Commission and placing the appointment of all tribunal members within the remit of the Commission but seeks views on the realignment of the appointments process.

5.5 In particular, views are sought on whether government should be removed entirely from the appointments process. With the exception of Crown appointments, which are made on the recommendation of the Lord Chancellor following selection by the Judicial Appointments Commission, Ministers no longer have a role in the appointment of judicial office holders in Northern Ireland and views are sought on whether independence would be enhanced if similar arrangements were applied to the appointment of tribunal members or whether, alternatively, the process should replicate arrangements in England and Wales where a Ministerial role is maintained.

Removals and Complaints

5.6 By virtue of sections 7 and 8 of the Justice (Northern Ireland) Act 2002, listed judicial office holders in Northern Ireland are subject to removal or suspension from office by the Lord Chief Justice. Removal may only be actioned following the recommendation of a removals tribunal convened by either the Lord Chief Justice or the Northern Ireland Judicial Appointments Ombudsman after they have consulted each other. Those removal arrangements apply to a number of tribunal office holders including members of the Northern Ireland Valuation Tribunal, the Care Tribunal and the Charity Tribunal, but others are subject to removal by the Minister.

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50 Following the enactment of the Constitutional Reform Act 2005 (c.4).
51 High Court Judges; County Court Judges; District Judges (Magistrates’ Courts); the Chief Social Security Commissioner; Social Security Commissioners; the Chief Child Support Commissioner and Child Support Commissioners are Crown appointees.
52 Office holders listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c.26).
53 High Court judges appointed prior to devolution are subject to different removal arrangements.
54 For example Lay members of the Special Educational Needs and Disability Tribunal, lay members of the Care Tribunal, Lay Members of the Industrial Tribunals and Fair Employment Tribunal; Specialist and Lay Members of the Health and Safety Tribunal and Members of the Tribunal under Schedule 11 of the Health and Personal Social Services (NI) Order 1972.
5.7 The Lord Chief Justice is also responsible for dealing with complaints against listed judicial office holders, including those tribunal members subject to judicial removal provisions, and has issued a Code of Practice on Complaints about the Conduct of Judicial Office Holders, a Protocol on Judicial Discipline, and a Statement of Ethics for the Judiciary.

5.8 In England and Wales, the Lord Chancellor and the Lord Chief Justice are ultimately responsible for complaints against the judiciary and judicial discipline, but have agreed that Presidents or other senior tribunal judiciary should usually be responsible for dealing with complaints in the first instance. The Department recognises that there may also be merit in standardising provision governing complaints against, and the removal of, tribunal office holders in Northern Ireland. It notes that the Nuffield research recommends that provision be made to that effect. However it seeks views on the issue and in particular on whether there are any categories of office to which it would not be appropriate to extend provision for judicial removal and complaint.

**Approach and Composition**

5.9 Of particular concern to the Department is the criticism that tribunals have undergone a process of ‘judicialisation’ over recent years. Tribunal panels are most commonly composed of a legally qualified Chair and two members with specialist expertise (the composition of the tribunals within the scope of the reform initiative is detailed at Appendix 9). Notwithstanding the involvement of non-legal members, and the philosophy underscoring the tribunal system, it has been suggested that some tribunals have become legalistic in their approach and can consequently be an intimidating environment for users.

5.10 Given the range of issues subject to adjudication, and the complexity of some of the matters considered, the Department accepts that it is inevitable that some tribunals will be more formal than others. The Department wishes to ensure that the overriding principles of the tribunal system are adhered to and that, on the whole, the process is less formal and less legalistic than that applicable in the courts. The Department would therefore welcome views on means by which the informal ethos of tribunals could be safeguarded.

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55 Section 16 of the Justice (Northern Ireland) Act 2002 (c.26).
5.11 The Department also wishes to receive views on the optimum composition of tribunals.

5.12 The Department acknowledges that the overriding desire of tribunal appellants is to have cases disposed of quickly, rigorously, fairly and with appropriate levels of expertise. It notes that adjudication by a sole office holder in the civil courts does not impact on the effectiveness of decisions, nor has it given rise to concerns about breadth of experience or expertise. It also noted that, although tribunal cases are most routinely heard by more than one member, in some tribunals certain matters are dealt with by one member alone.\(^{56}\) It is accepted that increasing the number of matters adjudicated by a sole tribunal member may increase concerns about the judicialisation of the process. **Views are therefore sought on the structure which would generate maximum benefits for tribunal users. In particular, the Department seeks views on:**

- optimum tribunal composition and structure;
- what the maximum and minimum number of panel members should be; and
- whether all hearings require adjudication by a panel or whether a single adjudicator would be appropriate for any categories of case or certain aspects of particular cases.

5.13 In England and Wales, tribunal composition is governed by a number of principles\(^{57}\), that is:

- the maximum number hearing a case should be three;
- hearings with more than one judge are appropriate only where there is a significant question of law to be considered, or for training purposes;
- tribunals rely on non-legal members for expertise and they should therefore, be deployed on a selective basis, dependent on the issues of the case, including the skills and understanding of the parties;
- expertise comes in many forms and is not confined to professional qualification;

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\(^{56}\) For example, the Traffic Penalty Tribunal and the Industrial Tribunals and Fair Employment Tribunal.

\(^{57}\) Principles governing composition were established following consultation on *Transforming Tribunals* (November 2007) and a review of non-legal members which was announced by Baroness Aston at the Council on Tribunals Annual Conference in November 2005.
analytical and chairing skills are not the confines of members of the judiciary and non-legal members of tribunals should be able to chair hearings or conduct hearings alone; and

- non-legal experts can and should be used outside formal tribunal hearings to advise the tribunal, provide reports, or chair meetings of expert witnesses.

5.14 The Department seeks views on the applicability of those principles to tribunals in Northern Ireland.

5.15 Tribunal composition and representation should be premised on the particular contribution members make. There may be merit in maintaining powers of allocation so that leaders can decide who should sit in cases and what their role should be but the Department wishes to explore the role of non-legal members and lay members on tribunal panels.

5.16 Not all tribunals currently have non-legal members and there is a wide variance in sitting frequency and the role that they play in those which do. This category of member encompasses a wide range of professionals including doctors, nurses, psychologists, surveyors, accountants and social workers. It also includes those with experience in delivering specialist services such as employment relations, or whose work has given them particular insight, for example on issues relating to people with mental health problems or with disabilities. The Department acknowledges that the variety and extent of roles fulfilled by non-legal members reflects the wide range of issues subject to tribunal determination. It recognises that, in respect of many tribunals, professional expertise may be critical to delivery of access to justice and effective adjudication and is therefore seeking views on the participation of non-legal members in tribunal hearings and the extent to which they should do so.

5.17 The Department is also keen to explore whether it would be preferable for experts to attend as witnesses rather than be represented on tribunal panels. Inability to question or rebut expert panel members who may have undertaken their own examinations or investigations may give rise to concerns about access to justice and could potentially give the impression that the tribunal will favour the views of expert panel members above the findings of expert witnesses.
5.18 The Department acknowledges that users may consider access to justice improved and tribunal impartiality enhanced by the inclusion of lay persons, without particular knowledge or professional qualification, to act in the capacity of reasonable bystander. In certain circumstances, the inclusion of lay members may broaden the experience brought to bear by tribunals and the inclusion of the perspective of the ‘man in the street’ may benefit the adjudicative process. **Views are therefore sought on the merits of including lay members in tribunals and in particular, on whether lay membership is more appropriate in some categories of tribunal than others.**

5.19 **Views are also welcome on what the particular role of non-legal and lay members of tribunals should be** and whether, for example, their input is required to add balance to the panel or to ensure that particular interests are represented.

**Tribunal Offices**

5.20 There are currently a number of different judicial ranks and offices within Northern Ireland tribunals with different eligibility requirements. Salaried legally qualified Presidents are appointed to a number of tribunals, but in others the Presidential role is conducted on a fee-paid basis, or there are fee-paid legal members but no President. Some tribunals also encompass Vice-Presidents and others salaried and fee-paid Chairmen. As noted above, many tribunals also encompass non-legal members such as persons who are qualified to give financial or medical advice.

5.21 The Department recognises that the reform initiative provides the opportunity to address variations in offices between tribunals and that the issue of consistency would be particularly pertinent in the event that a tribunal with generic jurisdiction were established. One possible option is the creation of a single judicial office for those sitting in first instance tribunals and, if a second appellate tribunal is created, another for those hearing second instance appeals. Tribunal judicial office holders could, as Chairs are now, be supported by tribunal members with requisite knowledge and experience. Members formally appointed to individual tribunals could be transferred to the new

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58 Such as the Industrial Tribunals and Fair Employment Tribunal, the Appeals Tribunal.
59 Including Presidents of the Special Educational Needs and Disability Tribunal and the Mental Health Review Tribunal.
60 Criminal Injuries Compensation Appeal Panel and Traffic Penalty Adjudicators.
offices with subsequent appointments made to it. It would also be open to rename offices to establish and emphasise their independent status.

5.22 The Department seeks views on standardisation of ranks across all tribunals, whether amalgamated structures are established or current jurisdictions are maintained. The Department recognises that Presidents can perform a vital function in the day to day co-ordination of tribunals by ensuring that cases are allocated to members possessing the most relevant experience and expertise. They can also add value by ensuring jurisprudential and practical consistency, by setting and interpreting practice and procedure throughout the tribunal, and in acting as the first point of contact in relation to training and welfare matters. However, there may be other mechanisms for providing oversight and leadership and the Department seeks views on alternative arrangements for those tribunals with no President in the event that offices are not standardised.

5.23 Views are also sought on the nomenclature of any restructured offices. In England and Wales, the Tribunals Courts and Enforcement Act 2007\(^61\) conferred the title of judge on legally qualified members of tribunals and the Department recognises the potential benefits of changing the title of tribunal offices in this jurisdiction. It also recognises the argument that, renaming legal members ‘judges’ could exacerbate concerns about the judicialisation, legalisation and formalisation of the tribunals process.

**Leadership**

5.24 The Lord Chief Justice is Head of the Judiciary and President of the Courts in Northern Ireland\(^62\) and as such is responsible for ensuring that appropriate arrangements are in place for the welfare, training and guidance of the court judiciary. The holder is also responsible for deployment and allocation of work and for representing the views of the judiciary to Ministers, Parliament and the Northern Ireland Assembly.

5.25 The leadership role of Lord Chief Justice does not generally extend to tribunal members. The holder does, however, have statutory responsibility for those tribunal judiciary listed in Schedule 1 to the Justice (Northern Ireland) Act 2002.\(^63\) The Nuffield

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\(^61\) Section 4 of the Tribunals, Courts and Enforcement Act 2007 (c.15).
\(^62\) Section 12 of the Justice (Northern Ireland) Act 2002 (c.26).
\(^63\) Approximately 330 are court judiciary.
research recommended that the responsibilities of the Lord Chief Justice should be extended to include members of tribunals currently outwith Schedule 1. The Department recognises the merit of the proposal to align leadership structures in terms of enhanced independence and standardising practice. The Department also acknowledges that the number of tribunal office holders alone could justify the creation of an additional free-standing tribunal leadership post.

5.26 In England and Wales, responsibility for leadership of tribunal judiciary currently vests in the office of the Senior President of Tribunals, who is responsible for the:

- First-tier Tribunal;
- Upper Tribunal;
- Employment Tribunals,
- Employment Appeal Tribunal; and
- Asylum and Immigration Tribunal;

including all the Chamber Presidents and their Tribunal Judges and Members. The holder undertakes functions similar to those of the Lord Chief Justice including representing the views of tribunal judiciary to Parliament and Ministers, assigning judges and members to tribunals, taking oaths, participating or nominating a member to the Tribunal Procedural Committee and reporting to the Minister in respect of tribunal cases. The Senior President must also concur with the Lord Chancellor on chamber structure, the allocation of functions between chambers, and in the making of orders prescribing qualifications for appointment.

5.27 In carrying out the functions the Senior President must also have regard to:

- the need for tribunals to be accessible;
- the need for proceedings before tribunals to be fair and handled quickly and efficiently;
- the need for the members to be experts in the subject matter or law to be applied in cases; and
- the need to develop innovative methods of resolving disputes.

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64 Section 2 of the Tribunals, Courts and Enforcement Act (c.15) established the office of the Senior President of Tribunals who is appointed by the Lord Chancellor and the heads of the judiciary in the three UK jurisdictions. Sir Robert John Anderson Carnwath CVO was sworn into office on 12 November 2007.
65 Estimated to be 5000 office holders.
The Senior President also exercises a number of functions delegated from the Lord Chief Justice in England and Wales, including disciplinary matters, medical retirements and extensions of service under the Judicial Pensions and Retirement Act 1993. The Senior President may in turn delegate functions to any judge, or other member, of the Upper Tribunal or First-tier Tribunal and to staff appointed by the Lord Chancellor. In practice, the delegation power has generally been used to confer responsibility on Chamber Presidents for the day to day management of chambers including judicial designation and case allocation. The functions delegated supplement and compliment the powers of Chamber Presidents to issue guidance on law and procedure within their respective chambers.

The reform initiative provides an opportunity to create a role equivalent to the Senior President in Northern Ireland. The Department is mindful, however, that the Lord Chancellor has announced his intention to unify courts and tribunal judiciary under the leadership of the Lord Chief Justice of England and Wales. The Department of Justice will continue to monitor developments in England and Wales, but in the context of indications thus far, conferring leadership responsibility for all tribunal members upon the Lord Chief Justice may be the preferable option.

If responsibility were conferred upon the Lord Chief Justice, it would be open to make provision for support in the conduct of new leadership responsibilities by an office equivalent to the Presiding offices established by the Justice (Northern Ireland) Act 2002. The Presiding Lay Magistrate, Presiding District Judge (Magistrates’ Courts) and Presiding County Court Judge support the Lord Chief Justice in the management of disciplinary and complaints mechanisms, the co-ordination and management of court business and in the conduct of his representation functions. The Presiding office holders also act as guides and mentors and proffer advice to other office holders within the same judicial tier. The Lord Chief Justice may delegate any functions relating to the relevant tier to the Presiding District Judge (Magistrates’ Courts) and Presiding County Court Judge and the Department recognises that there may be merit in establishing an equivalent supporting role within the tribunal tier.

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66 Sections 8 and 40 of the Tribunal, Courts and Enforcement Act 2007 (c.15).
67 Schedule 4, paragraph 7 of the Tribunal, Courts and Enforcement Act 2007 (c.15).
68 Sections 13, 14 and 15 of the Justice (Northern Ireland) Act 2002 (c.26).
5.31 The Department seeks views on whether an office equivalent to Senior President of Tribunals should be established in Northern Ireland, or whether the Lord Chief Justice’s leadership responsibilities should be extended to include all tribunal members.

5.32 Views are also sought on what the functions of this leadership post, if established, should encompass and whether it might include responsibility for:

- training;
- guidance;
- welfare;
- performance appraisal;
- standards reports;
- complaints;
- discipline;
- allocation;
- absence management; and
- deployment.

5.33 The Department is aware that in order to deliver leadership responsibilities effectively a President would require a wide range of knowledge and experience. In England and Wales, the office of Senior President has equivalent standing to a Lord Justice of Appeal and views are sought on the level of judicial experience which would be required for functions of an equivalent office to be effectively delivered in this jurisdiction.

5.34 The Department would also be grateful to receive views on whether, if leadership responsibility is instead conferred on the Lord Chief Justice, a presiding tribunal office should be created to assist in the delivery of leadership responsibilities. The Department also wishes to explore the functions which might appropriately be delegated to a presiding office holder.

Training

5.35 The Department is keenly aware of the correlation between available expertise and standards of adjudication and of the importance of providing adequate training. Training requirements depend on the jurisdiction of, and procedure applicable to, the
tribunal concerned. Needs will also vary in accordance with sitting requirements and whether an office is salaried or fee-paid, but judge-craft skills and good practice and approach are of equal importance to all tribunals.

5.36 At present, training for court judiciary is delivered by the Judicial Studies Board for Northern Ireland but there is currently no equivalent body for tribunal judiciary. Training for tribunal members is generally managed by the Tribunal President or Chairs on an ad-hoc basis and has traditionally been arranged through the relevant sponsor Department.

5.37 Given that approach it is perhaps not surprising that the Nuffield research found that both the amount and type of instruction provided to tribunal members varied. It found both active training, involving case study based participatory exercises, and passive training through the circulation of recent and significant case law to be prevalent and noted that many tribunal members considered that a more systematic approach to training would generate benefits.

5.38 The Department recognises that training may be one of the ways in which the fundamental concerns about inconsistencies and variances across tribunals could be addressed and that a centralised approach could help foster a unified culture and assist the sharing of good practice. **Views are therefore sought on whether the training of tribunal members in Northern Ireland should become the responsibility of a centralised authority.**

5.39 Extending the remit of the Judicial Studies Board to include tribunal judiciary is one possible means of achieving centralisation. Alternatively, a separate body could be established with particular responsibility for ensuring that tribunal members have the requisite knowledge and skills. Bringing the training of members within the remit of the Judicial Studies Board would allow tribunal members to benefit from an established portfolio of training. Utilising existing training mechanisms might also reduce the cost to the public purse by reducing duplication. A separate dedicated training authority focused on the particularities of the tribunal's process may, however, address concerns about the legalisation and judicialisation.
5.40 In England and Wales, the training of the judiciary and tribunal office holders which was previously delivered through the Judicial Studies Board and the Tribunals Judicial Training Group was centralised on 1 April 2011 when the Judicial College was established. The College is an independent body which operates as part of the Judicial Office.\(^{69}\) It draws its funds, staff, and most of its corporate support directly from the Ministry of Justice. The Lord Chief Justice and Senior President of Tribunals have oversight through the Judicial Executive Board. The College is responsible for initial training for new office holders, continuing professional education to develop skills and knowledge, and delivering programmes which support major legislative changes. The Department acknowledges that there may be some merit in establishment of a body equivalent to the Judicial College in this jurisdiction. It also recognises that in a smaller jurisdiction, with significantly fewer judicial and tribunal office holders, the cost of establishing and maintaining such a body could be disproportionately expensive. In that context it may be that extending the remit of the Judicial Studies Board is the preferable option.

Eligibility and Qualification for Appointment

5.41 There are currently no common eligibility criteria or generic qualifications for appointment to tribunal posts in Northern Ireland. The Department recognises the importance of eligibility requirements in determining the field from which appointments are made and is seeking views on whether the requirements for the various tribunals posts should be standardised, and if so, what the criteria should be.

5.42 Some appointments in Northern Ireland are restricted to members of professional bodies operating within the jurisdiction but others are open to members of UK wide professional bodies and the Department seeks views on whether restrictions should continue to apply and whether they are justifiable in respect of particular offices. In developing proposals for change, the Department will be alert to the recommendation of the Northern Ireland Commissioner for Judicial Appointments who proposed that consideration should be given to opening competitions to persons with

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\(^{69}\) The Judicial Office was established in 2006 to support the judiciary in discharging its responsibilities under the Constitutional Reform Act 2005 (c.4). It reports to the Lord Chief Justice and is charged with supporting the judiciary in upholding the rule of law and in delivering justice impartially, speedily and efficiently. It also supports the Tribunals Judiciary in a number of respects. The Office includes professional trainers, legal advisers, HR and communication experts, policy makers and administrators. The Office is organised in five groups with responsibility for Strategy, Communications and Governance; HR for the Judiciary; Senior judicial support through Private Offices and Jurisdictional Teams; the Judicial College; and Corporate Services.
less direct Northern Ireland experience but with comparable qualifications. The Department acknowledges that widening the pool of potential applicants could enhance the knowledge and experience applied to tribunal deliberations.

5.43 Qualification for appointment to most legal posts in Northern Ireland is seven years’ standing as a solicitor or barrister (most are restricted to barristers and solicitors in Northern Ireland). That eligibility requirement is replicated in many tribunal offices. Most equivalent tribunal offices in England and Wales require only five years’ post qualification experience and the Department is interested to receive views on whether the length of qualification for tribunal office should be similarly reduced in Northern Ireland.

5.44 The Department also seeks views on whether eligibility criteria should be extended to include persons from non-traditional legal backgrounds, for example to legal academics. The Tribunals, Courts and Enforcement Act 2007 extended eligibility for many judicial posts in England and Wales and made them open to Fellows of the Institute of Legal Executives, members of the Institute of Trade Mark Attorneys and the Chartered Institute of Patent Attorneys and views are sought on whether similar provision should be made in this jurisdiction, and if so, whether extended eligibility should be restricted to particular posts.

Retirement

5.45 Provision governing the retirement age of tribunal office holders is currently inconsistent.

5.46 The age of retirement of most judicial office holders, including office holders in Northern Ireland, is governed by section 26 of the Judicial Pensions and Retirement Act 1993. This provides that holders of offices specified in Schedule 5 to the Act shall leave office on the day on which they attain the age of 70. That provision also applies to a number of tribunal offices such as members of the Lands Tribunal and the Appeals Tribunal and to members of UK wide tribunals. There are, however, a number of office holders appointed by the Department for whom there is currently no statutory retirement

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71 Section 50 to the Tribunals, Courts and Enforcement Act 2007 (c.15).
72 (c.8)
The Department is seeking views on whether a statutory retirement age should apply equally to all tribunal offices.

Terms and Conditions of Appointment

5.47 As arrangements have developed piecemeal in accordance with different Departmental approaches, terms and conditions of appointment presently vary between tribunals. While there are some areas of conformity such as conduct, there are many, such as fees, and conditions for the payment of fees, which are inconsistent. There is variation in the sums paid to the fee-paid office holders, and a wide range of different policies in place for reimbursement when sittings are cancelled at short notice or for attendance at training events.  

5.48 The Department recognises that the establishment of a unified system may bring with it the need to rationalise the terms and conditions of appointment of fee-paid office holders. While the issue may become particularly pertinent if a generic jurisdictional structure is established, it will also continue to be a relevant issue in the event that existing structures are maintained. Many tribunal Chairs sit on more than one tribunal and administration would be aided considerably by commonality in terms and conditions of appointment. The Department is therefore seeking views on the merits of undertaking a review with the aim of effecting rationalisation and ensuring any continuing discrepancies between appointments appropriately reflect differences in the roles. Proposals adopted will need to recognise the stringencies of the current economic environment.

5.49 As with the terms and conditions themselves, responsibility for conditions of appointment is also inconsistent. The terms and conditions of many tribunal members, including members of the Special Educational Needs and Disability Tribunal and Appeals Tribunals are a matter for the Northern Ireland Judicial Appointments Commission with the agreement of the Department of Justice. Responsibility for others, such as members of the Lands Tribunal, vests in the sponsor Department.

73 Rates of reimbursement can range between a full daily fee to fifty percent of a daily fee or a flat rate allowance.

74 The terms and conditions of Social Security and Child Support Commissioners are an excepted matter and vest in the Lord Chancellor and Treasury. They are, therefore, not subject to consideration as part of this review.
5.50 The Department acknowledges that the absence of a centralised authority could present a barrier to rationalisation and is therefore also seeking **views on aligning responsibility for setting terms and conditions of appointment.**

**Career Paths and Progression**

5.51 Recent research for the Judicial Executive Board in England and Wales\(^75\) concluded that there were a number of factors which could deter applicants from applying for senior judicial office.

5.52 While such factors would not appear to be relevant to tribunal offices, because:

- tribunal cases tend to be shorter and office holders are not required to make themselves available for long periods at a time, meaning that fee-paid posts can more easily be combined with other commitments than traditional judicial posts;
- that specialism and variety of jurisdictions allows tribunal office holders control of the areas in which they serve; and
- the inquisitorial nature and relative informality of proceedings may make tribunal positions more attractive than judicial posts to non-barristers;

the Department is keen to **explore factors which may deter applicants from applying for tribunal office and how any such issue could be addressed.**

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\(^75\) *The attractiveness of senior judicial appointments to highly qualified practitioners – Report to the Judicial Executive Board, Professor Dame Hazel Genn DBE, QC, December 2008, Professor of Socio-Legal Studies, University College London.*
6. Oversight

An Oversight Body

6.1 The Department recognises that effective oversight arrangements can be of fundamental importance to users’ perceptions of the adequacy of access to justice.

6.2 Oversight responsibility for the administrative justice system in Great Britain is undertaken by the Administrative Justice and Tribunals Council which was established by the Tribunals, Courts and Enforcement Act 2007.\(^{76}\)

6.3 The Council is a Non-Departmental Public Body sponsored by the Ministry of Justice. It succeeded the Council on Tribunals on 20 November 2007 and consists of between 10 and 15 members:

- two or three of which are appointed by Scottish Ministers with the concurrence of the Lord Chancellor and the Welsh Ministers;
- one or two of which are appointed by the Welsh Ministers with the concurrence of the Lord Chancellor and the Scottish Ministers; and
- the remainder of which are appointed by the Lord Chancellor with the concurrence of the Scottish Ministers and the Welsh Ministers.\(^{77}\)

The Council operates on a UK wide basis and has statutory Scottish and Welsh Committees.

6.4 The Council is charged with:

- keeping the administrative justice system under review;
- considering ways to make the system accessible, fair and efficient;
- advising Ministers and the Senior President on the development of the system and refer proposals for change; and
- making proposals for research into the system.

Administrative justice is defined by the Tribunals, Courts and Enforcement Act 2007\(^{78}\) as meaning the overall system by which decisions of an executive nature are made in relation to particular persons, including procedures for making decisions, the law under which they are made, and the system for resolving disputes and airing grievances.

\(^{76}\) Section 44 and Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 (c.15).

\(^{77}\) Further information on the objectives and membership of the Council is included at Appendix 12.

\(^{78}\) Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 (c.15).
relating to such decisions. As well as tribunals, it includes Ombudsman and other methods of dispute resolution.

6.5 Findings of the Administrative Justice and Tribunals Council are not binding on Government and the Ministry of Justice has recently consulted on plans to abolish it.

6.6 The Consultation on Reforms Proposed in the Public Bodies Bill published in July notes the intention to abolish a number of public bodies by March 2012. Abolition of the Administrative Justice and Tribunals Council is proposed because the Government considers oversight and development should vest in the Ministry of Justice as the Department responsible for administrative policy. The consultation also suggests that the establishment of the unified Tribunals Service in April 2006, and the subsequent merger of the Service with HM Courts Service in April 2011, have ensured well established arrangements for policy and governance arrangements and that these render the oversight function of the Administrative Justice and Tribunals Council duplicative and unsustainable at a time of severe financial constraint.

6.7 The consultation closed on 11 October 2011 and a summary of responses is expected to be published by the end of the year. In developing proposals for this jurisdiction, the Department will consider responses to that consultation and subsequent developments. The Department will also take into account developments in Scotland where a consultation exercise on the creation of a Scottish Civil Justice Council was published in September. That consultation, which closes on 22 December 2011, is seeking views on the proposal to replace the existing civil rules councils of the Court of Session and the Sheriff’s Court with a body with generic rule making responsibility. Views are also sought on the Council undertaking a policy role by recommending improvements to the civil justice system.

6.8 The Scottish Government has suggested that the Civil Justice Council should:

- have responsibility for reviewing practice and procedure followed in civil proceedings in the Court of Session and sheriff court;
- have responsibility for preparing and submitting to the Lord President draft rules of procedure for the courts;

79 Consultation on Reforms Proposed in the Public Bodies Bill (July 2011).
80 Consultation on the Creation of a Scottish Civil Justice Council (September 2011).
that in carrying out those functions it should consider how to make the civil justice system more accessible, fair and efficient, and consider broader issues of dispute resolution and avoidance (for example how best to develop mediation); and

where appropriate, make other recommendations for change.

6.9 The consultation suggests that the Scottish Civil Justice Council should have an active role in making recommendations to the Lord President and Scottish Ministers as to how the Scottish civil justice system may be improved. In light of the proposed abolition of the Administrative Justice and Tribunals Council, views have also been invited as to whether the Council's responsibility for making recommendations in relation to the "civil justice system" should include administrative justice and tribunals as well as the courts.

6.10 Elements of the Nuffield research suggest strong support for the establishment of an oversight body in Northern Ireland equivalent to the Administrative Justice and Tribunals Council. The research recommends that a Northern Ireland Administrative Justice and Tribunals Council should be charged with reviewing the administrative justice system and should be responsible for making recommendations to Ministers and to the Lord Chief Justice on the development of the system to ensure that it is accessible, fair, and efficient. It recommends that responsibility for appointing the Council should vest in the Minister of Justice after public competition and should encompass four to six persons, with the Northern Ireland Ombudsman as an ex officio member, and that the inclusion of a Parliamentary Ombudsman should also be considered.

6.11 Other elements of the Nuffield research suggest a wider remit for the proposed Council, recommending that it should also encompass responsibility for Civil and Family matters. It recommends that the Council should be Chaired by the Lord Chief Justice and should have reporting to it sub-committees for Civil, Family and Administrative Justice. The research proposes that the Committees should encompass members of the judiciary, legal practitioners, advice bodies and academics.

6.12 The Department acknowledges that the establishment of a Northern Ireland oversight Council could help to ensure coherence and consistency across tribunals. The Department also acknowledges that concerns about oversight and accountability could alternatively be addressed through the tightening of governance arrangements under the
platform of a unified administration and through the establishment of a leadership role with responsibility for monitoring the performance of tribunal members against predetermined criteria. It is also noted that, in a time of economic stringency, the creation of additional oversight bodies can strain resources and draw service from front line priorities. **Views are sought on this issue and, in particular, on whether the remit of any such Council should include civil and family justice matters as well as administrative justice. Views are also sought on alternative mechanisms for oversight of the administrative justice system in Northern Ireland.**

6.13 In bringing forward proposals, the Department will be mindful not only of responses, but also of developments in England and Wales and Scotland following the consultations detailed above. The Department will also take note of responses to the Access to Justice Report\(^1\) which suggests that there may be merit in the establishment of the Civil Justice Council originally recommended by the Civil Justice Reform Group headed by Lord Justice Campbell in June 2000.\(^2\) That report recommended the establishment of a body under the chairmanship of the Lord Chief Justice with a remit to consider whether the civil justice system is accessible, fair, and efficient and to advise government and the judiciary on the development of the system and of the impact of proposed policy or legislative initiatives. It was proposed that members of the Council be drawn from different tiers of the judiciary, practising barristers and solicitors, government departments, and should include persons with experience of consumer affairs, the advice sector, or with an academic background.\(^3\)

6.14 Although a Civil Justice Committee has been established in Northern Ireland, the Access to Justice Report has suggested that the body does not have the breadth of remit or representation originally envisaged by the Civil Justice Reform Group. The report has recommended the establishment of a wider inter-disciplinary forum to address civil justice matters and to facilitate stakeholder consideration of inter-related policy

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\(^1\) Consultation closes on 13 December 2011.

\(^2\) Civil Justice Reform Group *Review of the Civil Justice System in Northern Ireland* (June 2000).

\(^3\) Proposals, replicate, to some extent, arrangements in England and Wales, where a Civil Justice Council was established as an Advisory Public Body under section 6 of the Civil Procedure Act 1997\(^4\) with responsibility for overseeing and co-ordinating the modernisation of the civil justice system.

The Council encompasses members of the judiciary; members of the legal professions; civil servants concerned with the administration of the courts; persons with experience in and knowledge of consumer affairs; persons with experience and knowledge of the lay advice sector; and persons able to represent the interests of particular kinds of litigants (for example business or employees).

The Council is funded by the Ministry of Justice and meets a number of times a year to discuss and agree formal responses to consultation papers. It also provides advice to the Lord Chancellor, the Judiciary and to the Civil Procedure Rule Committee on the effectiveness of aspects of the civil justice system, and makes recommendations to test, review or conduct research into specific areas.
matters, pre-court processes, and case management. It has been further suggested that the judicial involvement in such a group could add considerable value.
7. How to Respond

Duration of Consultation

7.1 The final closing date for responses to this discussion paper is 5pm on 6 January 2012.

7.2 It is intended that responses to this discussion paper will inform proposals which will be the subject of a public consultation exercise early next year. In line with statutory obligations and best practice on consultation, the public consultation exercise will be for a 12 week period.

Responses

7.3 Preferably responses should be submitted in the questionnaire which accompanies this document. Responses are welcomed by post, email or text phone and should be sent to:

Email: policyandlegislation@courtsni.gov.uk
Post: Department of Justice
Civil Justice Policy and Legislation Division
Laganside House
23 – 27 Oxford Street
Belfast
BT1 3LA
Tel: 028 90412901
Fax: 028 90728944
Text phone: 028 90142920

7.4 When responding, please state whether you are making a submission as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

7.5 A list of consultees who have been notified about this discussion paper is presented at Appendix 1.
Additional Copies and Alternative Formats

7.6 An electronic copy of this document is available to view and download from the Department of Justice website (http://www.dojni.gov.uk).

7.7 You may make copies of this document without seeking permission. If you require further printed copies, we would invite you to access the document through our website and make the copies yourself. If you do not have access to the internet and require us to provide you with further copies, please contact Civil Justice Policy and Legislation Division (details listed above at paragraph 7.3) with your specific request.

7.8 This document may also be made available in alternative formats (Braille, large print, audio cassette, computer disc etc), on request. If it would assist you to assess the document in an alternative format, or a language other than English, please let us know and we will do our best to assist you.

Confidentiality

7.9 At the end of the consultation period, copies of responses received by the Department may be made publicly available. The information will also be published in a summary of responses which will be made available on the Department of Justice website. If you do not want all or part of your response or name made public, please state this clearly in your response. Any confidentiality disclaimer that may be generated by you or your organisation’s IT system or included as a general statement in your fax cover sheet, will be taken to apply only to information in your response for which confidentiality has been specifically requested.

7.10 Any personal data which you provide will be handled in accordance with the Data Protection Act 1998. Respondents should also be aware that the Department’s obligations under the Freedom of Information Act 2000 may require that responses not subject to specific exemptions in the Act may be communicated to third parties on request.

7.11 Please contact Civil Justice Policy and Legislation Division at the address above to request copies of responses. An administrative charge may be made to cover photocopying of the responses and postage costs.
Equality

7.12 Section 75 of the Northern Ireland Act 1998 requires that all public authorities in Northern Ireland comply with a statutory duty to:

- have due regard to the need to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, martial status, or sexual orientation, gender, and those with or without a disability and those with or without dependents; and
- have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group.

7.13 In addition, public authorities are also required to meet legislative obligations under the Disability Discrimination (Northern Ireland) Order 2006\(^4\), particularly in the formation of public policy making.

7.14 The Department is committed to fulfilling those obligations and proposals arising from responses to this Discussion Document will be subjected to screening to determine impact on equality of opportunity, good relations and other statutory duties.

Consultation Process

7.15 If you have any queries about the information provided in this document please contact Civil Justice Policy and Legislation Division (details listed above at paragraph 7.3). However, if you have any queries or concerns about the way in which the consultation exercise has been handled, you may raise these with the Departmental Consultation Co-ordinator at the following address:

Mark Higgins
Central Co-ordination Branch
Central Management Unit
Department of Justice
Stormont Estate
Belfast
BT4 3SG
Tel: 028 9076 5784
Email: mark.higgins@dojni.x.gsi.gov.uk

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\(^4\) S.I. 2006 No.312 (N.I.1).
What Happens Next?

7.16 We will aim to publish a summary of the views expressed by consultees on the Department website within three months of the end of the consultation period. Responses will help inform proposals which will be the subject of a public consultation exercise early next year.
Appendix 1 - Consultees

- Lord Chief Justice of Northern Ireland
- Judiciary / Tribunal Judiciary
- Tribunal Presidents Group
- Tribunal Members
- General Council of the Bar of Northern Ireland
- Law Centre (Northern Ireland)
- Northern Ireland Ombudsman
- Tribunal Reform Reference Group
- Academics (QUB, UUJ), Dr Jack Anderson, Brian Thompson, Gráinne McKeever
- Law Society of Northern Ireland
- Children’s Law Centre
- Directorate of Legal Services
- Institute of Professional Legal Services
- Departmental Solicitor
- Justice Committee
- Northern Ireland Law Commission
- Northern Ireland Judicial Appointments Commission
- Northern Ireland Judicial Appointments Ombudsman
- Committee on the Administration of Justice
- Northern Ireland Local Government Association
- Members of the Northern Ireland Assembly
- Attorney General for Northern Ireland
- Office of First Minister and deputy First Minister
- Department of Agriculture and Rural Development
- Department of Culture, Arts and Leisure
- Department of Education
- Department for Employment and Learning
- Department of Enterprise, Trade and Investment
- Department of the Environment
- Department of Finance and Personnel
- Department of Health, Social Services and Public Safety
- Department for Regional Development
- Department for Social Development
- Advice NI
- Mediation NI
- Family Mediation NI
- Labour Relations Agency
- Citizen’s Advice Bureau
- Equality Commission
- Human Rights Commission
- Northern Ireland Legal Services Commission
- Consumer Council for Northern Ireland
- Ministry of Justice
- Scottish Justice Department
- British Medical Association
- Northern Ireland Political Parties
Appendix 2 – Chronology of Reform

Chronology of Tribunal Reform

1957
The Franks report which recognised that statutory tribunals are an integral part of the machinery of justice in the state, was published (report did not specifically include Northern Ireland but principles are applicable).

March 2001
Sir Andrew Leggatt’s review: Tribunals for Users which called for a more unified tribunals structure supported by an independent Tribunals Service was published (review did not extend to Northern Ireland but it was noted that many of the same issues arose).

July 2004
White paper: Transforming Public Services: Complaints, Redress and Tribunals, was published by the then Secretary of State for Constitutional Affairs and Lord Chancellor (paper did not extend to Northern Ireland).

2005
Interdepartmental working group established to review the tribunal system and consider the implications and applicability of Sir Andrew Leggatt’s Review and the White paper concluded that many criticisms of the system were justifiable.

March 2006
Then Secretary of State, Peter Hain, announced the intention to commence a programme of tribunal reform beginning with the transfer of administrative responsibility for tribunals to the then Northern Ireland Court Service.

July 2009
Executive endorsed the creation of a unified courts and tribunals administration.

1 September 2009
Administrative responsibility for the Lands Tribunal, Care Tribunal, Mental Health Review Tribunal, the Tribunal under Schedule 11 of the Health and Personal Social Services (Northern Ireland) Order 1972 and the Special Educational Needs and Disability Tribunal
transferred to the then Northern Ireland Court Service by way of agency arrangements under section 28 of the Northern Ireland Act 1998.

**5 February 2010**
Agreement at Hillsborough Castle authorised the Department of Justice to build on the ongoing programme of tribunal reform.

**1 April 2010**
Administrative responsibility for the Appeals Tribunal and Rent Assessment Panel transferred to the then Northern Ireland Court Service.

Northern Ireland Court Service undertook responsibility for the newly established Health & Safety and Charity Tribunals.

**12 April 2010**
Devolution of justice functions.

**13 May 2010**
Justice Committee endorsed transfer of statutory responsibility for tribunals to the Department of Justice.

**23 June 2010**
Minister of Justice announced tribunal reform as part of plans to reshape the justice system and published the Tribunal Modernisation Strategy and Action Plan.

**October 2010**
Administrative Reform Reference Group established to map the administrative justice landscape, identify the costs and benefits of restructuring tribunals, and improve the quality and timeliness of information available to tribunal users.

**18 November 2010**
Executive endorsed transfer of statutory responsibility for tribunals to the Department of Justice.
1 April 2011
Transfer of statutory responsibility for Lands Tribunal, Care Tribunal, Mental Health Review Tribunal, the Tribunal under Schedule 11 of the Health and Personal Social Services (Northern Ireland) Order 1972; the Traffic Penalty Tribunal, the Special Educational Needs and Disability Tribunal and the Health and Safety Tribunal to the Department of Justice. The Charity and Northern Ireland Valuation Tribunals also came within the remit of the Department of Justice on that date but no statutory functions required to be transferred.
Appendix 3 – Northern Ireland Tribunals

Tribunals Sponsored by the Department of Justice

- Care Tribunal;
- Charity Tribunal;
- Criminal Injuries Compensation Appeals Panel;
- Health and Safety Tribunal;
- Lands Tribunal;
- Mental Health Review Tribunal;
- Northern Ireland Valuation Tribunal;
- Traffic Penalty Tribunal;
- Tribunal under Schedule 11 of the Health and Personal Social Services (NI) Order 1972;
- Social Security and Child Support Commissioners; and
- Special Educational Needs and Disability Tribunal.

Tribunals Administered by the Department of Justice

- Appeals Tribunals (sponsored by the Department for Social Development);
- National Security Certificate Appeal Tribunal (sponsored by the Northern Ireland Office); and
- Rent Assessment Panel (sponsored by the Department for Social Development).
- Pensions Appeal Tribunal (sponsored by the Ministry of Justice).

Tribunals Sponsored and Administered by Other Departments

- Industrial Tribunals and Fair Employment Tribunal (sponsored by the Department for Employment and Learning); and
- Planning/Water Appeal Commissions (sponsored by the Office of the First Minister and deputy First Minister).
Appendix 4 - Functions of Northern Ireland Tribunals

**Appeal Tribunals**

The Appeal Tribunals hear applications about decisions made by civil servants in the:

- Social Security Agency;
- Child Support Agency;
- Northern Ireland Housing Executive; and
- Rates Collection Agency;

about the assessment of, and entitlement to; a number of benefits including Disability Living Allowance, Child Support, Incapacity Benefit, Industrial Injuries Benefit and Severe Disablement Allowance.

**Care Tribunal**

The Care Tribunal was established to hear appeals against decisions of the Regulation and Quality Improvement Authority regulation of residential care homes, nursing homes, children’s homes, nursing agencies and independent health care providers and later other care services; decisions prohibiting or restricting the employment of individuals teaching or working with children or working with vulnerable adults or decisions concerning the registration of social workers.

**Charity Tribunal**

The Charity Tribunal was established on 1 April 2010 to hear appeals from decisions made by the Charity Commission. The types of decisions that can be appealed and who may bring an appeal to the tribunal are set out in Schedule 3 of the Charities Act (Northern Ireland) 2008.

**Criminal Injuries Compensation Appeals Panel**

Criminal Injuries Compensation Appeal Panel hears appeals against decisions made by the Compensation Agency in respect of entitlement and assessment of criminal injury and criminal damages payments.
Health and Safety Tribunal
The Health and Safety Tribunal hears, considers and determines appeals against decisions made by a licensing authority in connection with the issue of, conditions applied to, or revocations of asbestos or petroleum-spirit licenses. The Tribunal adjudicates upon disputes between members of the public, private bodies and the Health and Safety Executive for Northern Ireland where the appellant has had a disputed action issued under the Petroleum (Consolidation) Act 1929 as amended or in circumstances where the appellant has had a disputed action issued under the Control of Asbestos Regulations (NI) 2007 as amended.

Industrial Tribunals and Fair Employment Tribunal
The Industrial Tribunals and the Fair Employment Tribunal are judicial bodies set up to hear and resolve certain matters of dispute in the employment field including complaints of religious, political, racial or sexual discrimination, unfair dismissal and equal pay.

Lands Tribunal
The Lands Tribunal is a court which, among other matters, resolves disputes over the amount of compensation to be paid for the compulsory acquisition of land or for the injury caused to land by, for instance, the making of roads.

Mental Health Review Tribunal
The Mental Health Review Tribunal is a judicial body responsible for deciding upon the necessity for the compulsory detention of mentally disordered patients in hospital or the continuation of guardianship or aftercare under supervision in accordance with the Mental Health (Northern Ireland) Order 1986.

Northern Ireland Valuation Tribunal
The Northern Ireland Valuation Tribunal hears and determines appeals against new capital values for property in Northern Ireland in respect of domestic rates.

Rent Assessment Panel
Rent assessment committees (usually made up of a chair and one member) are constituted from the Rent Assessment Panel to consider, at the request of a landlord or
tenant, if rent determined by the rent officer is an appropriate rent. The Rent Officer determines an appropriate rent for any property subject to rent control as per Article 40 of the Private Tenancies (Northern Ireland) Order 2006. Where a landlord or tenant exercises their right to have the rent considered by a rent assessment committee, the rent officer refers the case to the Appeals Service who in turn assigns the case to a rent assessment committee.

**Social Security Commissioners and Child Support Commissioners**

The Social Security Commissioners and Child Support Commissioners are the specialised members of the judiciary appointed to hear and determine appeals on points of law from Appeal Tribunals under the Social Security and Child Support legislation.

**Special Educational Needs and Disability Tribunal**

The Special Educational Needs and Disability Tribunal hears appeals from the parents of children with special educational needs against certain decisions of Education and Library Boards in the assessment and statementing process. A statement sets out the specific educational requirements of a child. The Tribunal also hears claims of disability discrimination made against schools and/or Education and Library Boards in Northern Ireland.

**Traffic Penalty Tribunal**

The Traffic Penalty Tribunal hears and determines appeals against Penalty Charge Notices issued by or on behalf of the Roads Service.

**Tribunal under Schedule 11 of the Health and Personal Social Services (NI) Order 1972**

The Tribunal established under Schedule 11 to the Health and Personal Social Services (NI) Order 1972 to consider representations from a Health and Social Services Board regarding disqualification of a professional.
## Appendix 5 – Tribunal Members

<table>
<thead>
<tr>
<th>TRIBUNAL</th>
<th>MEMBERSHIP</th>
<th>TOTAL</th>
</tr>
</thead>
</table>
| Appeals Tribunal                                           | 1 President  
1 Legal Chairman  
176 Members                                                  | 178   |
| Care Tribunal                                              | 2 Legal Chairmen  
19 Lay Members                                                  | 21    |
| Charity Tribunal                                           | 1 President  
2 Legal Members  
4 Lay Members                                                   | 7     |
| Criminal Injuries Compensation Appeal Panel                | 1 Chairman  
20 Adjudicators                                                  | 21    |
| Health and Safety Tribunal                                 | 3 Legal Chairmen  
3 Specialist Members  
3 Lay Members                                                   | 9     |
| Industrial Tribunals and Fair Employment Tribunal          | 1 President  
1 Vice President  
7 Salaried Chairmen  
19 Fee-paid Chairmen  
140 Lay Members                                                | 168   |
| Lands Tribunal                                             | 1 President  
1 Surveyor Member                                                 | 2     |
| Mental Health Review Tribunal                              | 8 Legal Members (including the Chairman & Deputy Chairman)  
11 Medical Members  
7 Lay Members                                                   | 26    |
| Northern Ireland Valuation Tribunal                        | 1 President  
23 Legal Members  
9 Valuation Members  
10 Lay Members                                                   | 43    |
| Rent Assessment Panel                                      | 12 Members                                                               | 12    |
| Special Educational Needs and Disability Tribunal          | 1 President  
7 Legal Members  
26 Lay Members                                                   | 34    |
| Social Security and Child Support Commissioners            | 1 Chief Commissioner  
1 Commissioner  
5 Deputy Commissioners                                           | 7     |
| Traffic Penalty Tribunal                                   | 4 Adjudicators                                                           | 4     |
| Tribunal under Schedule 11 of the Health and Personal Social Services (NI) Order 1972 | 2 Legal Members  
12 Other Members                                                  | 14    |
1. First-tier Tribunal (comprises of six chambers)

   - The General Regulatory Chamber:
     Alternative Business Structures;
     Charity;
     Claims Management Services;
     Consumer Credit;
     Environment;
     Estate Agents;
     Gambling Appeals;
     Immigration Service;
     Information Rights;
     Local Government Standards in England; and
     Transport.

   - Health, Education and Social Care Chamber:
     Care Standards;
     Mental Health;
     Special Educational Needs & Disability; and
     Primary Health Lists.

   - Immigration and Asylum Chamber:
     Immigration and Asylum.

   - Social Entitlement Chamber:
     Asylum Support;
     Criminal Injuries Compensation; and
     Social Security and Child Support.

   - Tax Chamber:
     Tax; and
     MP Expenses.
2. **Upper Tribunal (comprises of four chambers)**
   - **The Administrative Appeals Chamber:**
     Upper Tribunal (Administrative Appeals).
   - **The Immigration and Asylum Chamber:**
     Upper Tribunal (Immigration and Asylum).
   - **The Lands Chamber:**
     Upper Tribunal (Lands).
   - **The Tax and Chancery Chamber:**
     Upper Tribunal (Tax and Chancery).

3. **Tribunals outside the jurisdiction of the First-tier and Upper Tribunals**
   - Adjudicator to HM Land Registry;
   - Employment;
   - Employment Appeals;
   - Gangmasters Licensing Appeals;
   - Gender Recognition Panel;
   - Proscribed Organisations Appeal Commission;
   - Reserve Forces Appeal;
   - Residential Property Tribunal Service; and
   - Special Immigration Appeals Commission.
### Appendix 8 – Appeal Structure in England and Wales

#### Upper Tribunal

<table>
<thead>
<tr>
<th>Chamber</th>
<th>President</th>
<th>From</th>
<th>Hears appeals from:</th>
<th>Transferred in:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Appeals Chamber</td>
<td>Mr Justice Paul Walker</td>
<td>(3 Nov 2008)</td>
<td>Taxation Chamber and appeals from Charity Tribunal's jurisdictions in the General Regulatory Chamber. It has also been allocated some judicial review functions.</td>
<td>The Social Security &amp; Child Support Commissioners, Transport Tribunal and some Information Tribunal cases (see Tribunal Procedure Rules for details).</td>
</tr>
<tr>
<td>Tax and Chancery Chamber (renamed from September 2009)</td>
<td>Mr Justice Nicholas Warren</td>
<td>(15 February 2010)</td>
<td>First-tier Immigration and Asylum Chamber</td>
<td><strong>No onward right of appeal</strong></td>
</tr>
<tr>
<td>Immigration and Asylum Chamber</td>
<td>Mr Justice Nicholas Blake</td>
<td>(15 February 2010)</td>
<td>First-tier Immigration and Asylum Chamber</td>
<td><strong>No onward right of appeal</strong></td>
</tr>
<tr>
<td>Lands Chamber</td>
<td>Judge George Bartlett QC</td>
<td>(1 June 2009)</td>
<td>First-tier Immigration and Asylum Chamber</td>
<td><strong>No onward right of appeal</strong></td>
</tr>
<tr>
<td><strong>Key:</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>Scotland only</strong></td>
</tr>
</tbody>
</table>
## Appendix 9 – Tribunal Composition

<table>
<thead>
<tr>
<th>TRIBUNAL</th>
<th>PANEL COMPOSITION</th>
<th>LEGISLATIVE PROVISION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeal Tribunals</td>
<td>Chairman and two other persons; or 1, 2 or 3 Members drawn by the President from the panel constituted under Article 7. At least 1 Legal Member is required. Expert Members are required for cases involving questions of special difficulty.</td>
<td>Section 39 of the Social Security Administration (Northern Ireland) Act 1992 Article 8 of the Social Security (Northern Ireland) Order 1998.</td>
</tr>
<tr>
<td>Care Tribunal</td>
<td>1 Chairman and 2 Lay Members.</td>
<td>Paragraph 1(2) of Schedule 2 to the Health and Personal Social Services (Quality Improvement and Regulation) (Northern Ireland) Order 2003.</td>
</tr>
</tbody>
</table>
| Charity Tribunal                            | As determined by the President:  
  • President sitting alone; or  
  • Legal Member sitting alone; or  
  • President sitting with 2 Other Members; or  
  • Legal Member sitting with 2 Other Members; or  
  • President sitting with 1 Other Member; or  
  • Legal Member sitting with 1 Other Member.  
  (‘other members’ do not include the President). | Paragraphs 8(1) and (2) of Schedule 2 to the Charities Act (Northern Ireland) 2008.                                                                 |
<p>| Criminal Injuries Compensation Appeals Panel| Legal Chair and 2 Other Members (1 Medical Member and 1 Lay Member).                 | Article 7 of the Criminal Injuries Compensation (Northern Ireland) Order 2002                                                                             |
| Fair Employment Tribunal                    | Chairman and 2 Other Members from the panel appointed by the Department (employee / employer representatives). | Regulation 6 of the Fair Employment Tribunal (Rules of Procedure) Regulations (Northern Ireland) 2005.                                            |
| Health &amp; Safety Tribunal                    | 1 Legal Member (Chairman), 1 Specialist Member; and 1 Ordinary Member.              | Article 6(6)(7) of the Deregulation (Model Appeal Provisions) Order (Northern Ireland) 1997                                                              |
| Industrial Tribunals                        | Chairman and 2 Other Members from the panel appointed by the Department (employee / employer representatives. | Regulation 5 of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005.                        |
| Lands Tribunal                              | 1 Member sitting alone.                                                             | Article 17 of the Land Tribunal Rules (Northern Ireland) 1976.                                                                                       |
| Mental Health Review                        | 1 Legal Member; 1 Medical Member; and 1 Other Member (neither Legal nor              | Paragraph 4(1) and (2) of Schedule 3 to the Mental                                                                                                    |</p>
<table>
<thead>
<tr>
<th>Tribunal</th>
<th>Members</th>
<th>Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northern Ireland Valuation Tribunal</td>
<td>President or a Legal Member, 1 Member with experience in the valuation of land and 1 Ordinary Member</td>
<td>Article 4(1) of the Valuation Tribunal Rules (Northern Ireland) 2007.</td>
</tr>
<tr>
<td>Rent Assessment Panel</td>
<td>Chairman and 1 or 2 Other Members</td>
<td>Paragraph 4(2) of Schedule 1 to the Private Tenancies (Northern Ireland) Order 2006.</td>
</tr>
<tr>
<td>Social Security and Child Support Commissioners</td>
<td>Commissioner sitting alone; or Chief Commissioner may direct a panel of Commissioners (normally 3 members) in cases of special difficulty.</td>
<td>Section 55 of the Social Security Administration (Northern Ireland) Act 1992.</td>
</tr>
<tr>
<td>Special Educational Needs and Disability Tribunal</td>
<td>Chairman and 2 Lay Members.</td>
<td>Article 22(2) of the Education (Northern Ireland) Order 1996.</td>
</tr>
<tr>
<td>Traffic Penalty Tribunal</td>
<td>1 Adjudicator.</td>
<td>Article 29 Traffic Management (Northern Ireland) Order 2005.</td>
</tr>
<tr>
<td>Tribunal under Schedule 11 of the Health and Personal Social Services (NI) Order 1972</td>
<td>Chairman / Deputy Chairman, 1 Lay Member, and 1 Specialist Member (belonging to the profession of the person whose case is being investigated).</td>
<td>Paragraph 18(1) of Schedule 11 to the Health and Personal Social Services (Northern Ireland) Order 1972.</td>
</tr>
</tbody>
</table>
Appendix 10 – Tribunal Procedure Committee Terms of Reference

Terms of Reference

The Tribunal Procedure Committee exists to make rules governing the practice and procedure in the First–tier Tribunal and Upper Tribunal.

Power to make Tribunal Procedure Rules is to be exercised with a view to securing that:
- in proceedings before the First–tier Tribunal and Upper Tribunal, justice is done,
- the tribunal system is accessible and fair,
- proceedings before the First–tier Tribunal or Upper Tribunal are handled quickly and efficiently,
- the rules are both simple and simply expressed, and
- the rules where appropriate confer on members of the First–tier Tribunal, or Upper Tribunal, responsibility for ensuring that proceedings before the tribunal are handled quickly and efficiently.

Before the Committee makes Rules, the Committee must:
- consult such persons (including such of the Chamber Presidents) as it considers appropriate,
- consult the Lord President of the Court of Session if the Rules contain provision relating to proceedings in Scotland, and
- meet (unless it is inexpedient to do so).

Rules made by the Committee must be:
- signed by a majority of the members of the Committee, and
- submitted to the Lord Chancellor, who may allow or disallow the rules.

The Committee will also be consulted on Practice Directions received from the Senior President or Chamber Presidents.
# Appendix 11 – Appointing Authorities

## APPOINTMENTS MADE BY HER MAJESTY THE QUEEN

<table>
<thead>
<tr>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Social Security Commissioner</td>
</tr>
<tr>
<td>Social Security Commissioner</td>
</tr>
<tr>
<td>Chief Child Support Commissioner</td>
</tr>
<tr>
<td>Child Support Commissioner</td>
</tr>
</tbody>
</table>

## APPOINTMENTS MADE BY NORTHERN IRELAND JUDICIAL APPOINTMENTS COMMISSION

<table>
<thead>
<tr>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deputy Social Security Commissioner</td>
</tr>
<tr>
<td>Deputy Child Support Commissioner</td>
</tr>
<tr>
<td>Pensions Appeal Tribunal – President</td>
</tr>
<tr>
<td>Pensions Appeal Tribunal – Deputy President</td>
</tr>
<tr>
<td>Pensions Appeal Tribunal – Legal Member</td>
</tr>
<tr>
<td>Pensions Appeal Tribunal – Medical Member</td>
</tr>
<tr>
<td>Pensions Appeal Tribunal – Forces (Services) Member</td>
</tr>
<tr>
<td>Criminal Injuries Compensation Appeals Panel – Chairman</td>
</tr>
<tr>
<td>Criminal Injuries Compensation Appeals Panel – Adjudicator</td>
</tr>
<tr>
<td>Traffic Penalty Tribunal – Adjudicator</td>
</tr>
<tr>
<td>Northern Ireland Valuation Tribunal – President</td>
</tr>
<tr>
<td>Northern Ireland Valuation Tribunal – Ordinary Member</td>
</tr>
<tr>
<td>Lands Tribunal – President</td>
</tr>
<tr>
<td>Lands Tribunal – Deputy President</td>
</tr>
<tr>
<td>Lands Tribunal – Other Member</td>
</tr>
<tr>
<td>Lands Tribunal – Temporary Member</td>
</tr>
<tr>
<td>Special Educational Needs and Disability Tribunal – President</td>
</tr>
<tr>
<td>Special Educational Needs and Disability Tribunal – Chairman</td>
</tr>
<tr>
<td>Mental Health Review Tribunal – Medical member</td>
</tr>
<tr>
<td>Mental Health Review Tribunal – Legal member</td>
</tr>
<tr>
<td>Mental Health Review Tribunal – Lay member</td>
</tr>
<tr>
<td>Care Tribunal – Chairmen</td>
</tr>
<tr>
<td>Charity Tribunal – President</td>
</tr>
<tr>
<td>Charity Tribunal – Legal Member</td>
</tr>
<tr>
<td>Charity Tribunal – Lay Member</td>
</tr>
<tr>
<td>Health and Safety Tribunal – Chairmen</td>
</tr>
<tr>
<td>Appeals Tribunal – President</td>
</tr>
<tr>
<td>Appeals Tribunal – Fee-paid Member</td>
</tr>
<tr>
<td>Appeals Tribunal – Legal Member</td>
</tr>
<tr>
<td>Appeals Tribunal – Financial Member</td>
</tr>
<tr>
<td>Appeals Tribunal – Medical Consultant</td>
</tr>
<tr>
<td>Appeals Tribunal – Medical Generalist</td>
</tr>
<tr>
<td>Industrial Tribunals and Fair Employment Tribunal – President</td>
</tr>
<tr>
<td>Industrial Tribunals and Fair Employment Tribunal – Acting President</td>
</tr>
<tr>
<td>Industrial Tribunals and Fair Employment Tribunal – Vice President</td>
</tr>
<tr>
<td>Industrial Tribunals and Fair Employment Tribunal – Acting Vice President</td>
</tr>
<tr>
<td>Industrial Tribunals and Fair Employment Tribunal – Chairmen</td>
</tr>
<tr>
<td>Industrial Tribunals and Fair Employment Tribunal – Fee-paid Chairmen</td>
</tr>
</tbody>
</table>

### MINISTERIAL APPOINTMENTS

| Charity Tribunal – Lay Member |
| Health and Safety Tribunal – Lay Member |
| Health and Safety Tribunal – Specialist Member |
| Industrial Tribunals and Fair Employment Tribunal – Lay Member |
| Rent Assessment Panel – Panel Member |
| Special Educational Needs and Disability Tribunal – Lay Member |
Appendix 12 - Administrative Justice and Tribunals Council

Strategic Objectives

The key objectives of the Administrative Justice and Tribunals Council are to keep under review and influence the development of administrative justice and tribunals through:

- giving authoritative and principled advice and guidance to government, the Tribunals Service and others within the administrative justice system on changes to legislation, practices and procedures to improve the working of administrative justice, tribunals and inquiries, including a framework of generally applicable principles;
- exploring and promoting the scope for new approaches to dispute resolution;
- seeking to build up influence over forthcoming legislation, in particular in advance of publication;
- recognising and responding to the diverse needs and circumstances of users, by applying effective monitoring arrangements and being alert to emerging issues; and
- raising awareness of the different approaches within the UK legal systems.

The Administrative Justice and Tribunals Council will keep under review the work of the Tribunals Service, the tribunals within it and other tribunals:

- offering advice and assistance on wider policy issues that complement the Tribunals Service’s own work programme or otherwise affect tribunals;
- commenting from time to time on Tribunals Service priorities, standards and performance measures; and
- monitoring progress and performance of tribunals against common standards and performance measures.

The Administrative Justice and Tribunals Council will respond authoritatively to emerging issues and proposals that affect or involve administrative justice, tribunals and inquiries more generally:

- identifying and responding to perceived needs and current/prospective concerns in relation to all aspects of administrative justice;
- identifying priorities for, and encouraging the conduct of, relevant research;
monitoring the relationships between first instance decision makers, ombudsmen, tribunals and the courts to ensure they are clear, complementary and flexible;

- promoting the accessibility of administrative justice and tribunals to users through open, fair and impartial procedures and high quality, user friendly information and advice; and

- employing a range of communication methods to give an account of its work and disseminate its views.

**Membership**

The Administrative Justice and Tribunals Council consists of not more than 15 nor less than 10 appointed members. Of these, either two or three are appointed by the Scottish Ministers with the concurrence of the Lord Chancellor and the Welsh Ministers; and either one or two are appointed by the Welsh Ministers with the concurrence of the Lord Chancellor and the Scottish Ministers. The remainder are appointed by the Lord Chancellor with the concurrence of the Scottish Ministers and the Welsh Ministers.

The Lord Chancellor, after consultation with the Scottish Ministers and the Welsh Ministers, nominates one of the appointed members to be Chair of the Administrative Justice and Tribunals Council. The Parliamentary Commissioner for Administration (the Parliamentary Ombudsman) is a member of the Administrative Justice and Tribunals Council by virtue of his or her office.

The Council also has a Scottish and Welsh Committee.

The Scottish Committee consists of the two or three members of the Administrative Justice and Tribunals Council appointed by the Scottish Ministers (one being nominated by the Scottish Ministers as Chair) and three or four other members, not being members of the Administrative Justice and Tribunals Council, appointed by the Scottish Ministers. The Parliamentary Ombudsman and the Scottish Public Services Ombudsman are members of the Scottish Committee by virtue of their office.

The Welsh Committee consists of the one or two members of the Administrative Justice and Tribunals Council appointed by the Welsh Ministers (one being nominated by the Welsh Ministers as Chair) and two or three other members, not being members of the
AJTC, appointed by the Welsh Ministers. The Parliamentary Ombudsman and the Public Services Ombudsman for Wales are members of the Welsh Committee by virtue of their office.